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MANDATES-TRUSTLESHIP SYSTEMS

by

Israel Stolper

(LL.B Northeastern University 1915)
(Adj.A Harvard College 1945)

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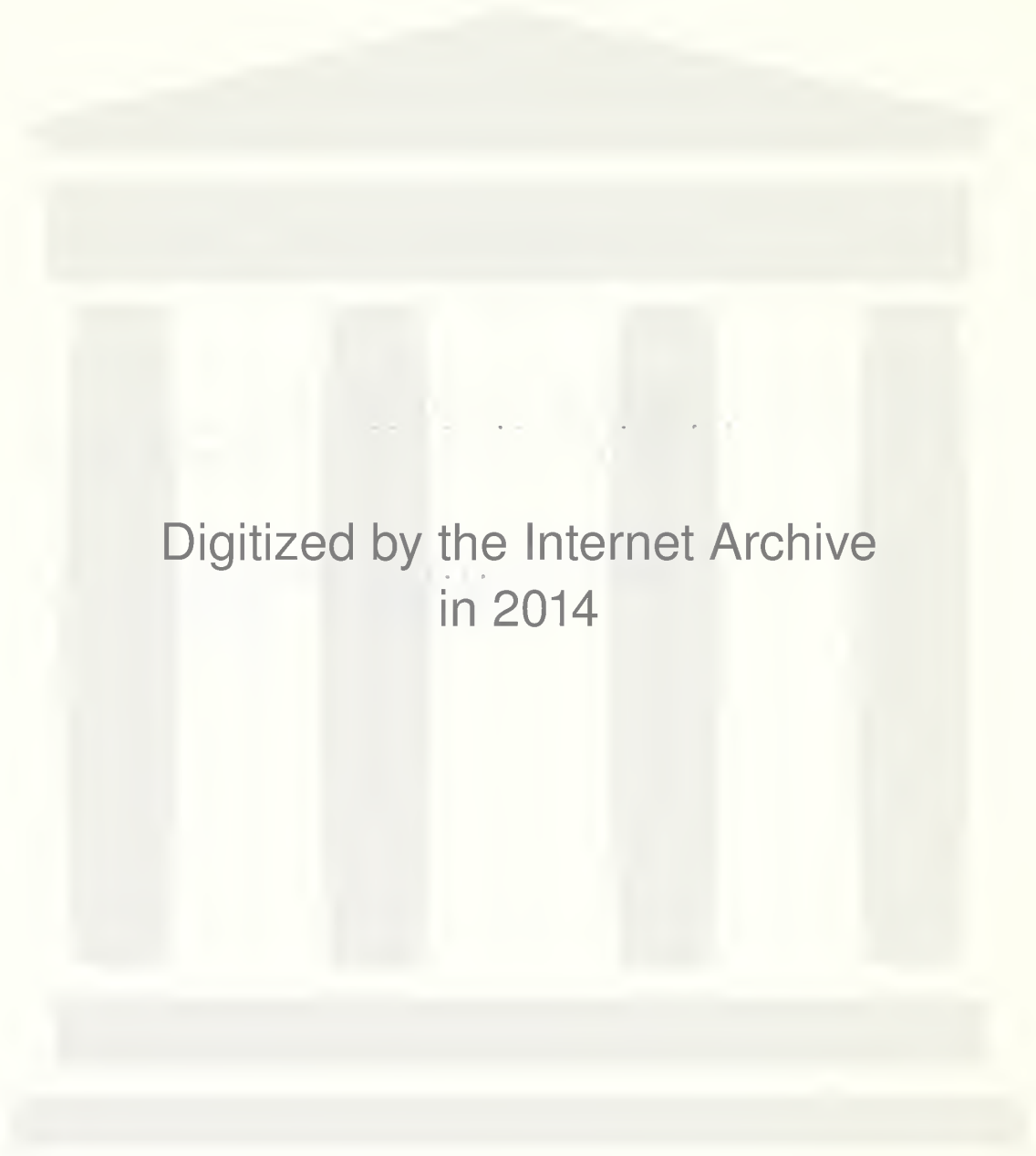
Approved

by

First Reader.... Robert P. Benedict.....
Asist. Professor of Government

Second Reader.... Milton D. Generales.....
Assistant Professor of Govt.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INTRODUCTION

The Mandates System and the International Trusteeship System as we understand them at this time may be said to have evolved more directly from the nation states of the Western State System in their struggle for empire. Though the actual mechanics of the mandates system were established and defined in Article 22 of the Covenant of the League of Nations, the system found its origin first in the struggle for supremacy between the small city--states which appear at the dawn of written history in the fertile valleys of the Nile, the Tigris-Euphrates, the Indus and the Yangtze-Kiang, and more directly perhaps in the early attempts of the nation states of the Western State System at colonization, self determination, national irredentism and the open door policy.

That patriotism and economic nationalism have contributed to the pursuit of policies of territorial aggrandizement there can be little doubt. Imperialism is the collective and all-embracing term used to define the actions of the Great Powers in their quest for markets, territories and prestige. This policy resulted in the exploitation of backward regions of the globe which culminated in the establishment of colonies, protectorates, mandates, and spheres of influence of the imperial states. Here, in these circumstances where expedience permitted, rival and enemy states--to protect their own interests-interposed to proclaim the open door policy or encourage the revolt of the subject peoples.

The word "Trusteeship" has been adopted by the United Nations to express their attitude towards the future of dependent peoples. It is not a new word. It has been used for more than a century and a half to denote the restraining and humanizing influence in colonial affairs. It has always meant a moral obligation on the part of advanced nations towards backward peoples, and in the course of time its political and economic meaning have become more and more clearly developed. The Mandates System was the first international attempt to apply this principle, and it recognized an obligation on the part of the whole world towards dependent peoples.

The doctrine of trusteeship was not in the first place the fruit of international conferences or even a deliberate formulation of policy on the part of any government. It was born of a remarkable expression of public feeling in the late eighteenth and early nineteenth centuries. This, known as the humanitarian movement, centered for many years in the attack on slavery but in reality, as Livingstone said, took all human misery for its field. In England, Edmund Burke in a speech on a Bill to reform the Government of British India in 1785 said, "Every species of political dominion and every description of commercial privilege....are all in the strictest sense a 'trust', it is the essence of every trust to be rendered 'accountable'". In America, the idea of trusteeship found its first legal interpretation in 1831, in a case entitled "The Cherokee Nation versus the State of Georgia" wherein Chief

Justice Marshall ruled that the Federal Government must regard itself as trustee for the lands held by the Indians.

In its beginnings, the doctrine of trusteeship was largely ethical. But towards the middle of the nineteenth century its political aspect began to take shape. An event of far reaching importance took place in the British colonies in Canada in 1839. This event was Lord Durham's report, advocating responsible self-government. Although the colonies to which it immediately referred were peopled mainly by white settlers, it is the key to political development throughout the British Empire since that time. It has resulted in the emergence of Canada, Australia, New Zealand and South Africa as entirely autonomous states.

The economic aspect of trusteeship had been developing side by side with its ethical aspect. Missionaries and others engaged in fighting the slave trade in Africa encouraged the substitution of legitimate commerce for the commerce in human beings and, largely through their influence, it came to be recognized that the commercial development of such territories must have the positive aim of contributing to the welfare of the inhabitants. Today, however, the economic doctrine of trusteeship is two-sided. It requires the development of backward areas in the interest both of the indigenous inhabitants and the world as a whole.

The purpose of this thesis is three-fold in its objectives:

First, it undertakes to establish the motives underlying and supporting the institutions of mandates and trusteeship systems. To accomplish this, it undertakes to trace the historical origin and development of the Mandates System which finally emerged from the Paris Peach Conference at Versailles in 1918 and, after its abandonment, of its counterpart--the International Trusteeship System--which culminated out of the preliminary agreements and final consummation of the United Nations Charter.

Second, it attempts to acknowledge the importance of the contributions made by philosophers, statesmen and humanitarians without whose combined political, economic and humanitarian influences the aforementioned institutions of mandates and trusteeship could not have successfully culminated.

Third, and finally, this thesis submits a comparison of the purposes and objectives of the Mandates System and of the International Trusteeship System in so far as such a comparison is possible--having in mind the relatively brief life of the former and the extenuating circumstances under which it attempted to operate and the recent origin and consequent lack of experience of the latter--in order that a proper evaluation of both institutions may be made and resulting benefits attained.

PART I

THE MANDATES SYSTEM - Its Formation.

Chapter 1.

The Origin of the Mandates System

Chapter 1.

The Origin of the Mandates System

1. Historical Background.

The Mandates System was an innovation in the fields of international law and of colonial policy and though it owed its creation mainly to the need for disposing of a pressing political problem, it is also a fact that, underlying this institution are ideas which had for a long time been taking shape in the minds of idealists, statesmen and experts in colonial matters and in international law and which had been disseminated by philanthropic and progressive circles in different countries. Some of these ideas had in fact already found expression, though in somewhat indefinite form, in international conventions.

At the outset of the period of modern colonization (sixteenth and seventeenth centuries) colonizers concerned themselves almost solely with the exploitation of the conquered areas for their own benefit and that of the mother country. The sixteenth century was a century of tentative experiments in

colonization and colonial policy on the part of Europeans in the new world. It was also a century when the economic, social and political movements were taking place which were to change both the nature and the tempo of colonization, and were to make the seventeenth and eighteenth centuries the era of large-scale of European colonial expansion.

First and foremost among the economic arguments advanced by imperialists of the nineteenth century and still more or less widely accepted today, is the vital need of an industrial nation for colonial markets in which to dispose of surplus manufactured goods, investing surplus capital, relieving surplus population, providing raw materials and promoting the welfare of the colored races. Though sometimes religious motives were alleged, nothing was as a rule undertaken in this direction beyond attempts to effect a rapid and superficial conversion of the natives, and if these failed the natives were very often exposed to the worst kind of treatment or even exterminated.

Out of the diplomatic history of the first two hundred years of European colonial expansion there came certain recognizable principles of international relations. First was the principle involved in the establishment of closed spheres of colonial interest--what might be called the principle of the "closed colonial door". Out of the protests chiefly of France and Holland against the doctrine of monopolistic ownership of land and sea in the colonial world arose the doctrine of the freedom of the seas, first enunciated in this connection by

Francis I and given its classic expression by Hugo Grotius.[1] Out of the colonial conflicts, also, arose the doctrine of the two spheres--that Europe is one sphere for the operation of international law and the new world is another, and that international arrangements made with regard to one do not necessarily apply to the other. Finally, out of the international conflict over the new world arose the doctrine of effective occupation and the general acceptance of the idea that land not actually settled by any Christian prince was fair prey for another.

International law which began to develop at this period, was held to apply only as between Christian States and therefore afforded no protection whatsoever to peoples dwelling outside the sphere of European civilization. Neither as individuals or as communities could the natives possess any rights, but their conquerors acquired rights over them. Thus they were entirely dependent upon the humanitarian sentiments of the colonizers and these as a rule provided a very dubious safeguard. The well being or material and moral needs of the natives were seldom if ever considered.

Gradually, however, humanitarian, political or economic considerations brought about a reaction against this state of affairs. A keener sense of moral responsibility for the welfare of the native races began to develop among colonizers. Towards the end of the eighteenth century and still more at the beginning of the nineteenth, theologians, philosophers and politicians of advanced ideas raised their voices against abuses such

as slavery and advocated fairer treatment for the native inhabitants of colonial territories. At the same time a truer appreciation of the economic potentialities of such territories brought about a realization that a policy of good treatment of the natives could not be otherwise than beneficial to the interests of the colonizers.[2]

The importance, from the point of view of the rational developments of colonies, of having at hand a supply of native labor in good physical and moral condition was realized. During the French Revolution, French laws abolished negro slavery in the French colonies. In England and elsewhere, philanthropic societies were founded with a view to the suppression of the slave trade and the protection of native populations. This movement led--from about 1830 onwards--to a series of legislative measures directed against slave trade. The status of the native began to improve, he was no longer a mere chattel in law and a possession to be exploited. Similarly, colonial practices began to be more scrupulous in its attitude towards native political entities; it became more and more usual to conclude treaties or agreements with the chiefs of tribes or of indigenous States, and, in the matter of terminology the appearance of this period of various forms of "protectorates" was significant.

At the period when the European Powers were all engaged in striking out claims in Central Africa (that is to say about 1880 on) humanitarian ideas were already in vogue. Alongside

the principle aims pursued by this policy of colonial expansion, considerations of this kind were definitely observable in two international conventions concluded towards the end of the century. In these two conventions we already find in embryo some of the principles which a generation later were more precisely and effectively enunciated in the mandates sytem. These principles embraced not only those relating to the welfare of the natives, but also the principle of economic equality between all members of the international community.

Remembering that missionaries, explorers, and statesmen had represented European activity in Africa as a humanitarian crusade to advance science, spread the Gospel, abolish slavery, and uplift the natives, the General Act of the Conference of Berlin,[3] signed on February 26, 1885, according to its preamble pursued the following aims:

(a) "in a spirit of good and mutual accord, to regulate the conditions most favorable to the development of trade and civilization in certain regions of Africa and to assure all nations the advantages of free navigation on the two rivers of Africa flowing into the Atlantic Ocean;

(b) to obviate the misunderstandings and disputes which might in the future arise from new acts of occupation on the coast of Africa, and, finally,

(c) the "furthering" of the moral and material well-being of the native populations."

All this was excellent as an expression of good intentions. When the discussion approached practical questions, such as forbidding the sale of liquor to the natives, humanitarianism proved weak. Five years later, the Powers undertook in the

General Act of the Conference of Brussels, signed July 2, 1890, to take certain measures with a view to the suppression of the slave trade, the protection of freed slaves and the restriction of the importation of fire-arms and spirituous liquor into Africa. The preamble of this convention contained the following words:

> "Equally animated by the firm intention of putting an end to the crimes and devastations engendered by the traffic in African slaves, of effectively protecting the aboriginal populations of Africa, and of assuring to the vast continent the benefits of peace and civilization...."

At all events, in respect of none of these undertakings did any higher authority exist to which could be referred claims regarding their application or interpretation. Still less had it occurred to anyone to create a permanent supervisory body responsible for seeing that these undertakings were carried out.

The International Commission of the Congo, established by Article 17 of the Act of Berlin, was responsible only for ensuring the execution of the provision of the Act of Navigation which was adopted as an integral part of this instrument. (Also, the Act of Brussels...to centralize all documents and information...to facilite the repression of slave trade...etc.) However useful the international offices thus established (at Zanzibar) may have been, their powers and sphere of action were therefore necessarily very limited.

Meanwhile, colonial doctrine became more and more imbued with the idea of "tutelage" and "trusteeship"--a moral responsi-

bility towards mankind for the treatments of the natives. Accordingly it was recognized in theory and occasionally in practice, that these new principles implied a potential right on the part of native communities or colonial possessions to acquire autonomy or independence--a right which would become effective when they reached a sufficient degree of maturity.

Thus, in 1898, the United States recognized the right of Cuba to her independence and after four years of temporary occupation they withdrew from the island. In 1899 the American Senate announced the intention of the United States to establish in the Philippines "a government suitable to the wants and conditions of the inhabitants of the said island and to prepare them for local self-government..." a condition which was actually fulfilled on July 4, 1946. The President of the United States in a message dated December 3, 1900, described the American possession of the Philippines as an "unsought trust which should be unselfishly discharged", he referred to the Filipinos as "wards of the nation" and to the task of United States as "an obligation as guardian".

The grant of self-government or independence to certain colonial possessions with a partly or mainly European population, particularly in the Western Hemisphere, was calculated to engender the idea that other colonial dependencies might eventually in their turn undergo a similar evolution. The development which led to the recognition of Asiatic or African countries as members of the international community also tended

in the same direction.

Furthermore, the mandatory idea made its appearance in the international sphere in a number of isolated cases in which the Powers entrusted one of their number with a specific task --sometimes of limited duration. Thus, in 1815, Great Britain took over the protectorate of the Ionian Islands under a sort of mandate conferred upon her by Russia, Prussia and Austria at the Conference of Paris.

In 1860 France intervened in Lebanon in order to protect the Christian population of that country (the Maronites) by virtue of a mandate from the Great Powers (Convention and Protocal 1 of the Conference of Paris--August 3, 1860).

A somewhat peculiar system was provided for in the case of Crete by the "Provisional Regulations" adopted on December 18, 1897, there was to be autonomy under the personal suzerainty of the Sultan of Turkey, the executive power was to be entrusted to a provisional Governor "in virtue of the delegation from the Great Powers", this governor was to transmit every quarter to the representatives of the Great Powers in Constantinople a report on the administration of the island.

2. Events leading more directly towards the establishment of Mandates System

EVENTS LEADING MORE DIRECTLY TOWARDS ESTABLISHMENT OF MANDATES SYSTEM

1906. At the Conference of Algeciras held from January 16 to April 7, 1906, including representatives of eleven European nations and of the United States and Morocco, the real conflict was fought over the question of police and finance; who would have military control and who would exploit Morocco? France wanted to officer the police and control the bank. Germany was opposed. President Roosevelt strenuously urged the Kaiser to accept "jointly with Spain a 'mandate' from all the Powers, under responsibility to all of them for the maintenance of equal rights and opportunities". The word "mandate" and indeed the whole conception, anticipates in almost uncanny fashion the mandate system which was to be established fourteen years later. Secretary Root, in his correspondence about Morocco referred to France and Spain as "mandatories".

1915. Walter Lippmann,[4] in a book written in 1915, stipulated that European conference such as the Algeciras Conference

on Morocco should not be disbanded when they have adopted a treaty but should "continue in existence as a kind of senate, meeting from time to time" and supervising the administration of the treaty. Ultimately there would be one of these continuing conferences or international senates for each of the sore spots where world crises originate, acting as a sort of "upper house"; while a native assembly would constitute a "lower house". Colonial administration would gradually become internationalized. Men going into backward countries would look to these new institutions, rather than to their home governments, for protection; there would no longer be need of armed interventions and crises; and competitive imperialism would be deprived of its excuse and its stimulus.

1915. In England somewhat similar proposals were made. Mr. J. A. Hobson,[5] eminent economist and anti-imperialist, felt as Mr. Lippmann did that the Algeciras Act for international regulation of administration of Morocco indicated a direction in which a solution might be sought. He suggested that under the supervision of an international council an individual nation might be given the right of intervention and even of political control, in a backward country, under an express agreement to preserve the open door. This same idea may also be traced back to the Berlin Act of 1885, placing the Congo basin under certain international restrictions, and prescribing, in particular, the open door.

1916. Mr. Philip Kerr, editor of the "Round Table",

spoke during the Great War in 1916 of "trusteeship" and "tutelage" as the proper relationships between colonies and their possessors. Kerr and other British students interested in imperial problems--a group of writers often known as the Round Table group--were probably a very important link in the chain that leads to the mandate system.

1917. British Labor Party. The idea of international control of colonies was given greater popular vogue through the memorandum of the aims adopted by the executive committee of the British Labor Party in 1917 in its proposal that all central Africa from sea to sea and from the Zambesi to the Sahara should be administered "by an impartial commission with its own staff" under the authority of the League of Nations that was to be established.

1918. In February 1918, the Inter-Allied Labor Conference met in London and the representatives of labor organizations and socialist parties recorded themselves as favoring the "frank abandonment of every form of imperialism". The "colonies of all belligerents in Tropical Africa" should be placed under a "system of control, established by international agreement under the League of Nations and maintained by its guarantee.....respecting national sovereignty, inspire broad conceptions of economic freedom and safeguard the rights of the natives".

1918. Jan Smuts, regarded as the father of the mandate system (though the fundamental idea was not the exclusive in-

vention of the South African statesman) proposed in December 1918 that the territories formerly belonging to Russia, Austria-Hungary and Turkey should be placed under the authority of the League of Nations which could then "delegate its authority" over any given area to "some other state whom it may appoint as its agent or mandatory" subject to restrictions specified by the League in a special "act or charter" and subject also to the rule than "whenever possible, the agent or mandatory so appointed shall be nominated or approved by the autonomous people or territory". Though Smuts here suggested the name and mechanism, he had no intention of applying the mandate system to the former German colonies in Africa or the Pacific.

General Smuts Plan. In the plan for a League of Nations published by Gen. Smuts in December 1918 on the eve of the Conference of Peace we find for the first time the broad outlines of an international mandates system. The author described in twenty-one points, each accompanied by a brief commentary, the main characteristics of what in his view, should be the future international organization.

The first nine points related to the fate of the countries which had belonged to the European or Near East Empires which had collapsed. In regard to these territories General Smuts proposed that the League should be regarded as "the reversionary in the most general sense and as clothed with the right of ultimate disposal in accordance with the fundamental principles. Reversion to the League of Nations should be substituted for

any policy of national annexation. The government of each of these countries should be established in accordance with the principle of self-determination. Nevertheless, the conditions prevailing in these territories varied considerably from one country to another and for some of them Gen. Smuts continues--"it will probably be found that they are as yet deficient in the qualities of statehood and that whereas they are perhaps capable of internal autonomy they will in one degree or another require the guiding hand of some external authority to steady their administration.....In all these cases the peoples concerned are perhaps sufficiently homogeneous and developed to govern themselves subject to some degree of external assistance and control".

The author however forsees that there may be other cases "owing chiefly to the heterogeneous character of the population and their incapacity of administrative co-operation, autonomy in any real sense would be out of the question and the administration would have to be undertaken to a very large extent by some external authority. This would be the case, at any rate for some time to come, in Palestine... "No state should--affirms Gen. Smuts--make use of the helpless or weak conditions of any of these territories in order to exploit them for its own purposes." The foregoing considerations are summarized by Gen. Smuts in the following recommendations: (4) That any authority, control or administration which may be necessary in respect to these territories and peoples, other than their own

self-determination and autonomy, shall be the exclusive function of and shall be vested in the League of Nations and exercised by or in behalf of it. (Here he points out the weak points of an international administration....works well only in international business arrangements like postal arrangement, Danube Commission, etc.) ends up with "the League should not as a rule meet the case not by direct appointment of international officials, but by nominating a particular state to act for and on behalf of it in the matter, so that, subject to the supervision and ultimate control of the League, the appointment of the necessary officials and the carrying on of the necessary administration should be done by this mandatory state".

Nevertheless Gen. Smuts points out--"the delegation of certain powers to the mandatory State must not be looked upon as in anyway imparing the ultimate authority and control of the League.....For this purpose it is important that in each such case of mandate, the League should issue a special Act or Charter clearly setting forth the policy which the mandatory will have to follow in that territory. This policy must necessarily vary from case to case, according to the development, administrative or police capacity and homogeneous character of the people concerned. The mandatory State should look upon its position as a great trust and honor, not as an office of profit or a position of private advantage for it or its nationals. Accordingly Gen. Smuts recommends: (6) That the degree of authority, control or administration exercised by the manda-

tory State shall in each case be laid down by the League in a special Act or Charter, which shall reserve to it complete power of ultimate control and supervision, as well as the right of appeal to it from the territory or people affected against any gross breach of the mandate by the mandatory State. (7) that the mandatory State shall in each case be bound to maintain the policy of the open door, or equal economic opportunity for all, and shall form no military forces beyond the standard laid down by the League for purposes of international police. Gen. Smuts' plan envisaged only the territories of Eastern Europe and of the Near East the fate of which had to be settled by the Peace Conference. As regards German colonies they were "inhabited by barbarians who not only cannot possibly govern themselves, but to whom it would be impracticable to apply any ideas of political self-determination in the European sense. Disposal here should be on the basis of President Wilson's point five.

1918. President Wilson's first draft of the Covenant made in the summer of 1918 contained no provision for a mandate system. In point 5 of his 14 points speech on January 9, 1918 Wilson said "A free open-minded, and absolutely impartial adjustment of all colonial claims based on a strict observation of the principle that in determining all such questions of sovereignty, the interest of the populations concerned must have equal weight with the equitable claims of the government whose title is to be determined".

Between these lines one can read two conceptions characteristic of Wilsonian policy, namely--his earnest desire to prevent the peace settlement from becoming a sordid division of spoils and his hatred of imperialist greed and exploitation.

President Wilson, having read the Smuts plan, incorporated the provisions for mandates in his second draft of the Covenant which was printed and distributed in January 1919. While adopting most of the Smuts provisions, even to the wording, Wilson made significant changes. He omitted Russia, and included the former German colonies, along with the former Austro-Hungarian and Turkish possessions. He strengthened the provisions for the League's authority over mandates. No weak compromise, but a genuine system of League control was to be established. Had this conception of the mandate system prevailed, many of the ambiguities and uncertainties which had embarrassed the organization would have been avoided. Between the Wilson plan for mandates and the Allied secret treaties there was first a battle, than a compromise, at the Paris Peace Conference in 1919.

Lastly, mention should be made of the "mandates" of a special kind conferred by the British Government on certain of the Dominions for the administration of various territories inhabited by backward races. In 1887 Australia was entrusted by the British Crown with the administration of the Protectorate of British New Guinea (known later as Papua). Similarly the South African Act of September 20, 1909 (Article 151) pro-

vided for the transfer to the Union of South Africa of the administration of certain adjoining territories, subject to a series of provisions drawn up in the interests of the natives. A schedule annexed to this act contains clauses regarding the land system, traffic in intoxicating liquor, native customs, employment of the revenue of the territory, etc. It will be thus seen that the notion of tutelage, of trusteeship and even of mandate in respect of the native populations were not unknown prior to 1919.

Equality of conditions in the economic sphere had also been recognized in principle as regards certain parts of Africa. The main elements, therefore, of the mandate system existed not only in theory, but had even to a limited extent been put into practice in a few cases.

From the point of view of International law, however, the position of the native communities on the eve of the First World War could, according to an authoritive writer on the subject, be summarized as follows:

"In its relations with semi-civilized States in so far as concerns all matters which have not been settled by treaty, and in all its relations with uncivilized communities, the international community of nations can avail itself of its de-facto power; it is bound only by moral principles resulting from Christian and humanitarian sentiments". It was not until the institution of the mandates system by the Covenant of the League of Nations that these "moral principles" were more pre-

cisely defined and, in the case of some territories at least transformed into principles of international law, and that provision was made for a supreme supervisory body to ensure the application of these principles.[8]

3. The Genesis of the Mandates System

THE GENESIS OF THE MANDATES SYSTEM

On taking up the question of the fate of the German colonies and of the territories of the Ottoman Empire inhabited by non-Turkish populations, the Peace Conference in 1919 found itself confronted with a peculiarly complex problem. A medley of factors of different kinds had to be taken into account; the actual situation resulting from the war; the claims of Allied countries and the agreement reached between them; the interests of the inhabitants of the territories in question; the trends of public opinion; the principles formulated by the governments which were to serve as criteria for the general peace settlement and, finally, the different degrees of civilization which had to be attained by the peoples inhabiting these territories and which rendered a uniform solution impossible.

The German Empire, which did not achieve national unity until 1871, was a later comer in the field of colonial expansion. The colonies of East Africa, Kamerun and Togoland were peacefully acquired in 1884-85 by treaties with native chiefs as a result of penetration by traders and missionaries; their

acquisition was, subsequently, confirmed by understandings with Great Britain and France.

At first the new colonies were entrusted to chartered companies possessing sovereign rights. This system proved a complete failure. The companies lacked power, money, prestige and national support and they could neither develop the vast resources at their disposal nor protect their territories. Their failure precipitated native uprisings and necessitated intervention and gradual assumption of colonial administration by the German Government.

At the outset, the Imperial Government was handicapped in its colonial administration by inexperience and by the chaotic conditions inherited from the misrule of the companies, as well as by administrative indifference and popular apathy. The administration was forced into granting concessions to land and mining companies in order to push development work, and many of the evils of company mismanagement were repeated. The steady succession of "deals" and "compromise" represented by the Berlin Congress of 1884, the Anglo-German Agreement of 1890, the Franco-German agreements of 1906 and 1911 are striking witnesses to the constant conflict of interests between Germany, France and Great Britain in Central Africa.

The Allies carried the war into the African colonies immediately upon its outbreak in 1914. Germany at once protested that this was an infringement of the Congo Act of February 26, 1885 (Art. 11) which bound the signatory powers to maintain

neutrality in the Congo Basin in case of war. Belgium supported Germany in an attempt to enforce this treaty, but they were overruled by Great Britain and France.

The German colonies were occupied during the war by the forces of the Allied countries and some of the latter, with the support of their public opinion had manifested an intention to annex one or the other of the colonies in question (in particular those in the Pacific) adducing as a reason either the sacrifices made during the war or motives of national security, or again humanitarian considerations. Certain official circles were, however, less inclined to favor an extension of the national colonial demain. There was, however, general agreement that the German colonies could not be allowed to revert to their former sovereignty.

With regard to those territories of the former Ottoman Empire the fate of which had to be settled, they too had been occupied by the Allied armies. Subject to certain reservations and without any precise definition of frontiers, negotiations conducted in 1915 between British representatives and the Emir of Mecca had envisaged the independence of the Arab countries.

On the other hand, a Franco-British agreement concluded in May 1916 had contemplated a special regime for Palestine and the Holy Places. Finally, in the Balfour Declaration of November 2, 1917, the British Government had undertaken to "view with favor the establishment in Palestine of a national home for the Jewish people", without prejudice to the "civil and

religious rights of existing non-Jewish communities in Palestine". This Declaration had been approved by the American, French and Italian Governments.

4. Establishment of the Mandates System

ESTABLISHMENT OF THE MANDATES SYSTEM

Instead of annexing the former German colonies at the end of the war, the Allies devised the mandate system, a novelty in international relations, and incorporated that system in the Covenant of the League of Nations.

Theoretically, the mandate system placed the peoples not yet able to stand by themselves under the tutelage and protection of advanced nations, acting on behalf of the League, who were regarded as mandatories and who were to regard their tutelage as a sacred trust of civilization.

Article 22 of the Covenant did not specify which the mandatory Powers were to be or how the mandated territories were to be distributed between them. These points were decided by the Supreme Council of the Allied Powers.

The German colonies in Africa and the Pacific were handed over, not to the League of Nations but to the Principle Allied and Associated Powers. According to Article 119 of the Treaty of Versailles, "Germany renounced in favor of the Principle Allies and Associated Powers all her rights and titles over her

overseas possessions". Article 132 of the Treaty of Sevres[9] of 1920 contained a similar clause whereby Turkey renounced in favor of the Principle Allied and Associated Powers all rights and titles over her territories outside Europe, "which are not otherwise disposed of by the present Treaty". As a result of subsequent events however the Treaty of Sevres never came into force: it was replaced by the Treaty of Lausanne of July 24, 1923. Under Article 16 of the latter treaty, Turkey renounced all rights and title over territores situated outside the frontiers recognized and laid down in their treaty. Article 16 also provided that the future of such territories being or would be settled by the parties concerned.

Hence, under the terms of the Treaties of Peace it was the Allied Supreme Council of the Allied Powers and not the League of Nations to select the Mandatory Powers and to allocate the mandates.

On May 7, 1919--the Supreme Council took the following decisions on the subject:

It allotted the Mandates for Togoland and the Cameroons[10] to France and Great Britain, requesting them to present a joint recommendation regarding the status of these territories to the League of Nations.

The Mandate for German East Africa (Tanganyika Territory) was allotted to Great Britain; that for South West Africa--to the Union of South Africa; that for Western Samoa to New Zealand and that for the Island of Nauru--to the British Empire. The

other German possessions in the Pacific south of the Equator (German New Guinea and adjacent islands) to Australia and islands north of the Equator to Japan. As result of subsequent negotiations, the North Western part of Tanganyika Territory (Province of Ruanda Urundi) was placed under Belgian Mandate by decision of the Supreme Council--August 21, 1919.

The mandatories delimited their own boundaries, with little regard for native interests. For instance, the first boundary between Tanganyika and Ruanda-Urundi bisected a tribe, depriving one part of its pasturage, which was later adjusted, due to objections raised by the Permanent Mandates Commission. The boundary between British and French Cameroons also bisects a tribe and had never been rectified.

The Mandatories for Syria, Palestine and Mesopotamia (Iraq) were designated by the Supreme Council at San Remo[11] on April 25, 1920. France was entrusted with the administration of Syria and Great Britain with that of Palestine and Iraq.

Though the League of Nations played no part in the designation of the Mandatory Powers, it was the League which by means of a series of legal instruments, specified the degree of authority, supervision or administration to be exercised by the selected mandatories. The "charters" drawn up in respect of each of the territories, specified the conditions governing the various mandates and to be observed by the mandatories.

According to Article 22 of the Covenant, "the degree of authority, control or administration to be exercised by the

Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council". The interpretation and application of this clause gave rise to some difficulty. It would seem that the authors of the Covenant had at first intended to insert the terms of the mandates in the Treaties of Peace; this idea was, however, subsequently abandoned. In July 1919, a committee composed of experts in colonial questions belonging to the Principle Allied and Associated Powers met in London, under the chairmanship of Lord Milner, in order to frame the charters for the mandated territories in Africa and the Pacific; no agreement however, was reached because some of the Governments concerned had made important reservations.

Subsequently, the Principle Allied and Associated Powers submitted to the Council a number of draft mandates which the latter adopted with slight amendments after satisfactory information that they were in conformity with the terms of the Covenant. In this way, the Council on December 17, 1920 confirmed the mandates for South West Africa, New Guinea, Nauru, Samoa and the Islands north of the Equator (the "C" Mandates).

With regard to the remaining African mandates (the "B" Mandates) and the mandates for the Near Eastern territories (the "A" Mandates) which were to have been confirmed in February 1921, a considerable delay occurred, owing chiefly to the intervention of the United States. During its session in February 1921, in fact, the Council received a note from the United

States Government requesting that the draft mandates should first be communicated to it for consideration.

The Council, which, before the receipt of the communication from the United States Government, had already postponed examination of the draft "A" mandates decided also to defer consideration of the draft "B" mandates, in order to comply with the wishes of that Government. In the course of the following eighteen months negotiations took place between the United States and the various Mandatory Powers regarding the terms of these mandates. Finally, on July 20, 1922 the various Mandatory Powers and the United States having in the meantime reached an agreement, the Mandates for the Cameroons, Togoland, Tanganyika, Ruanda-Urundi (the "B" Mandates) were confirmed by the Council and at once came into force.

The two Mandates for Palestine and Transjordan and for Syria and Lebanon were approved by the Council a few days later --on July 24, 1922 subject to the provision that they should not come into force until the French and Italian Governments had notified the President of the Council that they had reached a complete agreement on the negotiations proceeding between them regarding certain points of the Mandate for Syria. On September 29, 1923 the representatives of France and Italy announced that this agreement had been reached and the Council noted that the Mandates for Syria and Lebanon and for Palestine and Transjordan would in consequence enter into force automatically and at the same time.

A variety of causes delayed the confirmation and entry into force of the mandate for Iraq for several years. The British Government which in 1920 had submitted to the Council a draft mandate announced on November 17, 1921, through its representative on the Council that political developments in Iraq--the people of which had manifested a desire to have a national government under an Arab ruler--had led them to the conclusion that their obligation vis-a-vis the League could be most effectively discharged if the principles on which they rested were embodied in a Treaty to be concluded between Great Britain and the King of Iraq. This Treaty[12] was concluded on October 19, 1922 and communicated to the League of Nations. It was supplemented by a Protocol signed on April 30, 1923 by four subsidiary agreements dated March 25, 1924. On September 17, 1924 the Council approved the terms of this communication as giving effect to the provisions of Article 22 of the Covenant. A similar decision was taken by the Council on March 11, 1926 respecting a new Treaty concluded between the Mandatory Power and Iraq on January 13, 1926.

In the last place, in order to ensure the working of the Mandates System, the Commission contemplated by paragraph 9 of Article 22 of the Covenant had to be constituted. On December 21, 1920, after prolonged discussion, the Council approved the constitution of the Permanent Mandates Commission[13] which has undergone no essential modification since that time. The members of the Commission were appointed on February 22, 1921 and

the Commission held its first meeting on October 4, 1921.

Chapter 2

The Mandatory Regime and Its Principles

II The Mandatory Regime and its Principles

1. The Principle Organs

Out of a complex background of "trusteeship", "self-determination", "rights of small nations", political expediency and humanitarian sentiments, there emerged the most significant international effort to deal effectively with the double problem of imperialism--that of protecting native interests and that of keeping the peace among the empire builders--which finally culminated in the Mandates System devised at the Paris Peace Conference of 1919 and administered by the League of Nations.

The legal instrumentalities which served more directly to establish and regulate the conduct of the Mandates System were as follows:

(1) By Article 119 of the Treaty of Versailles,[1] Germany was compelled to renounce her colonies to the Principle Allied and Associated Powers. This served to establish the nucleus of the System as it were.

(2) The Covenant of the League of Nations, by Article 22

established the aims and the broad regulatory principles of the Mandates System.

(3) The Mandate "Charters"[2] served to specifically define the mandated territories, the Mandatory Powers and obligations both to the League of Nations and to the natives involved and the method for the settlement of disputes between the Mandatory Powers and the Members of the League of Nations relating to the interpretation or the application of the provisions of the mandates.

2. The Covenant

THE COVENANT

Article 22 of the Covenant of the League[3] contains nine paragraphs in which are set up in general terms the fundamental principles of the Mandates System together with the methods and safeguards designed to ensure their application.

The first two and the last three paragraphs of the Article formulate the guiding principles and may be said to constitute the framework of the new institution, the aim of which they clearly define. These provisions are applicable to all territories under mandate and it may be said that the following main principles emerge from these provisions:

The aim of the institution is to ensure the well being and development of the peoples inhabiting the territories in question.

The method of attaining this aim consists in instrusting the tutelage of these peoples to certain advanced nations. The acceptance by a nation of this mission carries with it certain obligations and responsibilities established by law. Like guardians in civil law, they must exercise their authority in

the interests of their wards--that is to say of the peoples which are regarded as minors--and must maintain an entirely disinterested attitude in their dealings with them. The territories with the administration of which they are entrusted must not be exploited by them for their own profit. Again, the phrase "peoples not yet able to stand by themselves" is used. It follows from this and from the very conception of tutelage that this mission is not, in principle, intended to be prolonged indefinitely, but only until the peoples under tutelage are capable of managing their own affairs.

The nations upon which such powers of guardianship are conferred exercise them "as Mandatories" on behalf of the League. In other words, the administration of these territories is delegated to them. This involves an obligation on their part to render account of their administration to the League of Nations. This is made plain by paragraph 7 which prescribes that the Mandatory is to render to the Council an annual report on the administration of the territory committed to its charge. Finally, the last paragraph 9 of the Article briefly describes the machinery to be established for the international supervision of the mandatory administration.

The Covenant (paragraphs 3 to 6 of Article 22) distinguishes between three categories of mandates, taking into account differences in the stage of development of the populations, in the geographical situation of the territory, in the economic conditions prevailing and any other circumstances

which may be relevant.

3. The Mandate "Charters"

THE MANDATE "CHARTERS"

The various Mandates or "charters" adopted by the Council comprise a collection of provisions defining the manner in which the principles laid down by the Covenant are to be applied. Under the terms of the latter, the degree of authority or control to be exercised by the Mandatory varies according to the character of the territory. Certain clauses, however, are common to all Mandates: the Mandatory has full power of administration and legislation subject to the terms of the Mandate; the Mandatory is under an obligation to make an annual report to the Council to the satisfaction of that body, giving full information as to measures taken to carry out the provisions of the Mandate; the Mandatory agrees, if any dispute whatever should arise between it and another Member of the League of Nations relating to the interpretation or application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article XIV of the Covenant of the League of Nations. Any modification of the terms

of the Mandate requires the consent of the Council of the League.

In the first group--"A" Mandates (Syria and Lebanon, Palestine and Trans-Jordan and Iraq)--the nation is provisionally recognized as independent, but receives the advice and assistance of a Mandatory in its administration until such time as it is able to stand alone.

In the second group--"B" Mandates (the Cameroons, Togoland, Tanganyika, Ruanda-Urundi)--as it is impossible to grant autonomy, the Mandatory is "responsible for the administration" under certain specified conditions. These conditions, which are briefly indicated in the Covenant are designed to prevent certain "abuses" and to ensure that the administration has the welfare of the natives constantly in mird. They aim also at securing respect for the rights and interests of other Members of the League of Nations.

Finally, the territories in the third group--the "C" Mandates (So. West Africa and the Islands of the Pacific)--are "administered under the laws of the Mandatory as integral portions of its territory "and subject to the same safeguards in the interest of the indigenous population as the territories under "B" Mandate. The remaining clauses vary according to the category to which the Mandate in question belongs.

The "C" Mandates, which are all almost identical are relatively simple. The Mandatory is authorized to apply his own legislation to the territory, subject to such local modifica-

tions as circumstances may require. He must promote to the utmost the material and moral well-being and the social progress of the inhabitants. In particular, he must see that slave trade is prohibited; that no forced labor is permitted except for essential public works and services and then only for adequate renumeration. The traffic in arms and ammunition must be strictly controlled and the supply of intoxicating spirits and beverages to the natives prohibited. No military training may be given to the natives save for purpose of internal police and local defence of the territory. No military or naval bases are to be established or fortifications erected. Freedom of conscience and the free exercise of all forms of worship are to be guaranteed. Missionaries, nationals or any State Member of the League of Nations are to be free to prosecute their calling in the territory.

The "B" Mandates go into more detail. They repeat most of the provisions of the "C" Mandates, with certain reservations; some clauses are expanded while a number of important new provisions are added. The Mandatory Power when framing laws relative to holding or transfer of land must take into consideration native laws and customs and safeguard native rights and interests. The Mandatory may constitute territory into a Customs, fiscal or administrative union with adjacent territory provided measure does not infringe provisions of Mandate; must secure to all nationals of State Members of League of Nations same rights enjoyed in territory by own na-

tionals, concessions having character of general monopoly must not be granted.

"A" mandates differ appreciably from those of the other two. In countries to which they apply, the inhabitants had reached a more advanced stage of development and their independence could, in principle, be recognized by the Covenant itself subject to conditions. The mission of mandatories in these countries consist mainly in developing their capacity to govern themselves and establish their economic and social institutions on a more secure feeling in order to fit them to take their positions as independent nations.

"A" Mandates differ from one another in some important respects. The Mandate for Iraq was terminated in 1932--strictly speaking there was no actual charter conferring the Mandate.

Clearly the "A" mandates are in theory merely transitional protectorates designed to guide the Arab states into full independence. The French Mandate over Syria (including Lebanon) expressly stipulates not only that an organic law or constitution shall be framed "in agreement with the native authorities", but also that France shall "enact measures to facilitate the progressive development of Syria and the Lebanon as independent States" (article 1). In Palestine Great Britain has "full powers of legislation and administration", but must encourage local autonomy and promote the "establishment of the Jewish National Home", and "the development of self governing institutions". In Mesopotamia, Great Britain has already established

an Arab kingdom and pledged herself to endeavor to secure its admission into the League of Nations.

Certain other general features of the "A" mandates are worth mentioning. The Mandatory is forbidden to interfere with religious liberty, or to discriminate against any of the inhabitants on religious grounds, or to impose its own language through the schools, or to cede to another state any of the mandated territory, or to violate the economic open door, or--in the case of Syria alone--to grant monopolistic concessions for the exploitation of raw materials, or to discriminate against citizens of other Members of the League in the granting of concessions. These are liberal provisions, far in advance of the principles applied in many a colony or protectorate not subject to a mandate.[4]

PART II

THE MANDATES SYSTEM - Its Supervision and Operation

Chapter 3

Supervision of the Mandatory Regime

THE SUPERVISION OF THE MANDATORY ADMINISTRATION

1. The Nature and Extent of the Supervision

The international supervision provided for in paragraphs 7 and 9 or Article 22 of the Covenant is the cornerstone of the whole Mandates System. Since the Covenant institutes a system of tutelage to be exercised on behalf of the League of Nations, the Guardians or Mandatories are responsible to the League and must accordingly accept its supervision. The very conceptions of tutelage and of a mandate imply compliance in the person or authority entrusted with it.

2. Powers, Duties and Procedure of the Organs of the League

POWERS, DUTIES AND PROCEDURE OF THE ORGANS OF THE LEAGUE

Under the Covenant the Supervision of the mandatory administration devolves upon the Council. It is to the Council that Mandatories render annual reports. It is to the Council that the Mandates Commission is to render advice on matters relating to the observance of the mandates and again, in the absence of any previous agreements between the Members of the League, it is the Council which was empowered to prescribe the terms of the mandates. Nevertheless, since the mandates are exercised in the name of the League as a whole, all its Members bear their share of the moral responsibility. The right to take decisions in regard to mandate questions belongs, however, to the Council. It exercises its supervision with the aid of the Permanent Mandates Commission instituted by the Covenant itself.

The Assembly under Article 3 of the Covenant "may deal... with any matter within the sphere of action of the League".

Some discussion took place at the first session of the

Assembly in 1920 regarding the question of the respective powers of the Assembly and Council in the matter of mandates. In practice, however, this question has never given rise to difficulty. The discussion in the Assembly usually leads to the adoption of a resolution laying stress on some particular aspect of the discharge of the mandates formulating some wish addressed to the Council, the Mandates Commission or the Mandatory Powers. Thus, the role of the Assembly consists in the exercise of a certain moral and very general influence in this domain. Its function may be said to be to maintain touch between public opinion and the Council.

The Permanent Mandates Commission was constituted in accordance with Article 22 paragraph 9 of the Covenant of the League of Nations. The organization and procedure of the Commission are regulated by its Constitution which was adopted by the Council on December 1, 1920 and by the Rules of Procedure[1] drawn up by the Commission itself and approved by the Council on October 10, 1921.

The Covenant provides that this Commission is "to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates". It is therefore essentially an advisory body--a body whose duty it is to examine and report--designed to assist the Council in carrying out its task.

Its work is preliminary in character. Constitutionally it has no power to take decisions binding on the mandatory

Powers or to address direct recommendations to them. Its conclusions are not final until they have been approved by the Council.

Under its Constitution the Commission consists of ten members of whom the majority are nationals of non-mandatory States. All the members are appointed by the Council.

The Commission meets in ordinary session at least once a year; hold extraordinary session at the request of one of its members subject to approval of a majority of the other members and of the President of the Council.

Every annual report is examined by the Commission in the presence of duly authorized representatives of the Mandatory Powers concerned. After the end of discussion and withdrawal of mandatory representatives, the Commission frames its observations and submits report to the Council. The representatives of the Mandatories may attach comments of their own to the report of the Commission.

The minutes of the discussions and the comments of the accredited representatives are all published. The Council examines the documents referred to it by the Commission and takes such decisions upon them as it may find expedient. As a rule, the conclusions of the Council coincide with those of the Mandates Commission. The Council usually communicates the observations of the Commission regarding the various territories to the Mandatory Powers concerned and request them to take action asked for by the Commission.

3. Sources of Information - Means of Supervision

SOURCES OF INFORMATION - MEANS OF SUPERVISION

In accordance with the Council's decision of August 5, 1920 the Mandates Commission examines the whole of the administration of the various territories in the light of the principles laid down in the Covenant and of the provisions contained in the Mandates themselves. It does not therefore limit itself to the more or less negative role which would consist in verifying that the Mandatories have not overstepped the powers conferred upon them; it likewise ascertains whether these powers have been put to good use and whether the administration has been in accordance with the interests of the native populations.

This twofold object of its supervision leads the Commission to go thoroughly into every aspect and all the details of the Mandatory administration.

The chief source of information at its disposal consists in the annual reports of the Mandatory Powers. From the outset, the Commission applied itself to facilitating the preparation of these reports and to the improvement of their system

by drafting, for the use of the Mandatory Powers, questionnaires of different types corresponding to the "A", "B" and "C" Mandates. The reports and their annexes which in general are prepared on the lines of these questionnaires, cover the whole field of activity of the various branches of the administration.

The Mandatory Powers, in fact, have continually sought to render their annual reports more comprehensive, and to include in them all relevant information concerning the points of special interest to the members of the Commission. Many of these reports also contain very valuable scientific information --on geographical, geological, linguistic, ethnographical and other subjects--which it would be difficult to find elsewhere.

The text of laws and administrative regulations, which the Mandatory Powers are under obligation to communicate to the League of Nations constitute an indispensable addendum to the annual reports.

The Petitions which the Commission receives from time to time either from inhabitants of the mandated territories, or from some other source, in accordance with a special procedure laid down by the Council, constitute not only a means whereby those concerned may state their grievances and secure redress for any wrongs done them, but also an additional source of information for the Commission. Any petition from the inhabitants of a mandated area must be transmitted to the League of Nations through the Mandatory Power concerned which is entitled

to attach thereto such comments as it may think desirable. Any petition from another source is communicated to the Chairman of the Commission.

The latter decides which, by reason of the nature of their contents or the authority or disinterestedness of their authors, should be regarded as claiming attention and which should be regarded as obviously trivial. The former are communicated to the Mandatory Power concerned, which is asked to present its observations; the latter (petitions regarded as non-receivable) are reported upon by the Chairman to the Commission. With regard to petitions received through the Mandatory Governments, the Commission itself decides, in accordance with certain criteria laid down in the rules, whether they can be entertained. Finally, with regard to petitions which are considered receivable the Commission is at liberty to formulate such conclusions or recommendations as it may consider appropriate for submission to the Council.

This procedure, while securing to interested parties the right to present petitions, has regard to the peculiarly delicate position of Mandatory Powers whose authority it is desirable not to lessen. In order to discourage calumnious statements, a distinction is drawn between petitions emanating from a source worthy of attention and those which are, for instance, inspired by ill-will.

A variety of documents not communicated by the Mandatory Powers constitute yet another source of information for the

Commission. These may be either official documents, such as the records of parliamentary debates concerning mandated territories, or information emanating from private sources, such as scientific studies or articles published in reviews or in the daily press. The collection of such documentation is the duty of the Mandates Section of the Secretariat of the League of Nations which is instructed by the Commission to submit to it any publications or documents which may be of interest to it and provide it with information regarding expressions of public opinion throughout the world concerning the mandatory system.

The hearing of the accredited representatives of the Mandatory Powers, on the occasion of the examination of the annual reports, generally enables the Commission to make good any deficiencies in the written information at its disposal, to clear up obscure or doubtful points, to dispel any misunderstandings and thus eliminate the possibility that its conclusions may be based on incomplete data. The presence of representatives of the Mandatory Powers has proved of greatest assistance to the Commission in the performance of its tasks. It affords an opportunity for the discussion, not only of questions arising out of the examination of the annual reports, but also of any questions of a general nature regarding the mandatory regime. In the results, there has grown up a genuine collaboration between the Commission and the representatives.

The Commission has made every effort to render this collaboration as fruitful as possible. At first, the Mandatory

Powers usually sent officials of the home country to represent them. In the report of its fourth session, however, the Commission drew the Council's attention to the exceptional assistance which an accredited representative, who was himself the administrator of the territory in question had afforded it. The Commission, in this connection, remarked that "the presence during its discussion of those who are personally responsible for the actual administration of the mandated territories presents, in the Commission's opinion, eminent advantages".

The Council, concurring in the view taken by the Commission, expressed the hope that the Mandatory Powers would in the future years find it possible "to send the officials personally responsible for the administration of mandated territories as representatives to the Mandates Commission".

The Mandatory Powers have complied with this wish so far as has been possible in practice and consequently the Commission has frequently had the benefit of the co-operation of personalities in direct charge of the administration of mandated territories, such as the High Commissioner of Syria, Iraq, and Palestine; the Governor of Tanganyika, the Commissioner for French Cameroons, and the Administrator of South West Africa, or again, the District Commissioner from Togoland, the Director of Native Affairs in New Guinea, etc.

Though it meets in Geneva, the Mandates Commission, thanks to the various sources of information, has at its disposal abundant data of different kinds which is supplemented by verbal

information; it is thus in a position to form an impression with regard to all aspects of the mandatory administration and to the conditions prevailing in the territories and, in general, to express opinions based on a complete acquaintance with the facts.

The Covenant and the Rules of Procedure with regard to the examination of annual reports and petitions do not empower the Commission to obtain supplementary information through channels other than those mentioned above. On the other hand, there is nothing in these rules which expressly precludes it from so doing.

In the absence of an express prohibition in regard to this point, the question may arise--and has in fact arisen--whether, in case the information at its disposal should after all appear inadequate, the Commission might not have recourse to other means of securing the information required by it. The fact that it is the duty of the Commission to furnish the Council with its opinion on all the questions relating to the execution of the mandates would seem to involve an obligation to do so with a full knowledge of the facts.

Does it not follow that the Commission should be free to select the means which it may consider most appropriate with a view to securing the requisite information? On the other hand, since the Council has laid down rules for the procedure to be followed with regard to the examination of annual reports and of petitions, must it not be inferred that recourse to any other

form of procedure is precluded?

The question has been raised, in the first place, in connection with the admissibility of an official hearing of petitioners. Discussion took place on this subject at the third, eighth and ninth sessions of the Commission. The views of the members of the Commission were summarized in the notes appended to the minutes of its ninth session. These notes make clear, on the one hand, the Commission's desire fully and impartially to investigate grievances which are referred to it and, on the other hand, its appreciation of the difficulties of the task of the Mandatory Powers. In its report to the Council on this session, the Commission, however, confined itself to the following observations: "The Commission has again carefully considered the procedure in force with regard to petitions. Experience having shown that sometimes the Commission has been unable to form a definite opinion as to whether certain petitions are well founded or not, the Commission is of the opinion that in these cases it might appear indispensable to allow the petitioners to be heard by it. The Commission, however, would not desire to formulate a definite recommendation on this subject before being informed of the views of the Council."[2]

Following upon this observation, the Council decided to request the Mandatory Powers to give their views on the question raised by the Commission. In their replies these Powers all opposed the hearing of petitioners. They pointed out that, with such a procedure--which would involve the hearing at the

same time of a representative of the Mandatory Power--the parties would, in fact, be engaged in a controversy before the Commission and that any procedure which would seem to transform the Commission into a court of law would be inconsistent with the very nature of the mandatory system. They added that the hearing of petitioners would weaken the authority which the Mandatory should possess in order to carry out its duties successfully and that it might lend itself to intrigues on the part of those who were more desirous of promoting disorder than of remedying defects.

Furthermore, it was observed that, in countries where the right of petition was governed by regulations, petitioners were not as a rule entitled to a hearing by the competent authorities. The Council, recognizing the justice of these observations, expressed the opinion that "there is no occasion to modify the procedure which has hitherto been followed by the Commission in regard to this question.

The Rapporteur, however, observed in his report that, if, in a particular case, the circumstances showed that it was impossible for all the necessary information to be secured by the usual means, the Council might "decide on such exceptional procedure as might seem appropriate and necessary in the particular circumstances". On the other hand, the members of the Commission have generally taken the view that, individually and in a private capacity, they might grant interviews to any person anxious to explain to them the situation in some mandated ter-

ritories or to present private grievances.

Investigations on the spot are not, generally speaking, regarding as within the competence of the Mandates Commission. The question whether it should be possible for the Commission or for special committees appointed ad hoc by the League of Nations, to undertake such investigations in order, if need be, to supplement the information at its disposal and obtain a personal impression on the spot of the conditions prevailing in mandated territories, has frequently been discussed by public opinion throughout the world and in literature relating to the mandates system. It has been contended in some quarters that the fact that it is the duty of the League of Nations to supervise the mandatory administration implies, or should imply, a right of enquiry, and the absence of local investigations has been criticised as a weakness of the system.[2]

The question of local investigations was raised in the Mandates Commission in 1925 in connection with the consideration of a petition from the Executive Commissioner of the Palestine Arab Congress. Holding that the official explanation in regard to this petition did not furnish the Commission with adequate information, the Rapporteur (the Spanish member) proposed, in accordance with the suggestion of the petitioners, that the Commission should consider the possibility of a visit to Palestine, "the visit to take place when, in agreement with the Council, it considers it opportune and possible". Having regard to the importance of the question of principle thus

raised, it was submitted for discussion. The result was much the same as on the question of hearing of petitioners--there was a good deal to be said on both sides.

The Chairman (the Italian member) of the Commission thought that "if the possibility of visits to the spot, not necessarily to Palestine, but as a general principle, either by the Commission itself or by other Commissioners, were admitted, great progress would be made, and not the Commission itself would derive benefit from it, but also the Mandatory Power and the populations.

The Vice-Chairman (the Dutch member) said, "as had often been stated in the Press, the fact that the Commission did not possess the right to make enquiries on the spot was a weak point of the mandates system or, rather, of the control which the Commission should exercise in the application of the mandate.....nevertheless....there was a good deal to be said for and against and it was feared that the arguments were mainly unfavorable. Was it conceivable that the mandatory Power concerned would submit to such an enquiry, which however it might be made, would not fail, above all in a disturbed country, seriously to affect the prestige of the local government?"

The Portugese member expressed opinion that the Council had the right to send a commission to a country administered by a mandatory Power.

The Swiss member, "such a proposal would inevitably give rise to an explosion of feeling".

Finally, the British member, "the proposal that the Commission should either visit Palestine itself or send a sub-committee to conduct an enquiry was quite impracticable. No mandatory would accept such a procedure--its prestige would inevitably suffer--for the Commission or sub-committee would be in the position of a court of enquiry in which the mandatory Power would be the defendant.[3]

It emerges from the discussion, first, that the Commission did not consider itself entitled to undertake local investigation in mandated territories in the absence of express authority from the Council and, secondly, that it could not make up its mind to propose that the Council should confer this right upon it, as the opinion of members of the Commission differed regarding the expediency and utility of such enquiries. The Commission however agreed that in exceptional cases--if there was a specific point such as a border dispute or punitive action it might propose the sending of a commission of enquiry though this need not necessarily be the Mandates Commission itself or include some of the latter's members.

4. The Mandates Section of the Secretariat

THE MANDATES SECTION OF THE SECRETARIAT

History. This section--one of the original services of the Secretariat organized even before the Covenant went into effect--appeared in first official document as Mandatory Section, changed to Mandates Section in 1922--when the question of slavery was added. In the course of reorganization of the Secretariat in 1939 the Mandates Section was incorporated in the newly created department. Since 1940, the Secretariat continued to collect up-to-date documentary material concerning territories under Mandate.

Task, Functions and Activities. The Mandatory System established under Article 22 of the Covenant provided for the administration of fourteen territories by Mandatory Powers under supervision of the League.

The Covenant provided for the constitution of a body of experts--the Permanent Mandates Commission--entrusted with duties of examining annual reports submitted by the Mandatory Powers and of hearing the representatives of those Powers.

Furthermore, the Commission submitted reports to the

Council on the results of its examination and investigated all general problems relating to the subject, including such questions as termination of mandates.

The Duties of the Section. The duties of the Section were to:

(a) Prepare the work of the Council and of the Assembly on this question;

(b) Correspond with Governments of the Mandatory Powers;

(c) Serve as permanent Secretary for the Mandates Commission which meets twice per year; and

(d) Collect and classify...data in public and private documents on the mandated areas, policies of the Mandatory Powers with regard to these areas and general questions of colonial administration.

The Mandates Section communicated to the members of the Commission every four months on important events occurring in various territories. In addition to handling correspondence with governments--the section dealt with correspondence respecting petitions sent in by petitioners from mandated territories or by outside bodies, in either case--through the Mandatory Powers.

It examined petitions on the point of their "receivability" and submitted results of its examination to the Chairman of the Commission. Since the Permanent Mandates Commission considered only written petitions it did not receive petitioners in person hence, visitors by members of the Section to territories were

very rare.

The importance of the indirect influence exercised by the Secretariat should not be underestimated--the Secretariat was in a position to influence the Commission by supplying the information though it attempts to observe utmost impartiality.

Staff. The Staff of the Mandates Section consisted of:
5 officials (included 2 members of the Secretariat) in 1921
9 officials (included 3 members of the Secretariat) in 1930
11 officials (included 4 members of the Secretariat) in 1933
9 officials (included 3 members of the Secretariat) in 1938

Its first provisional director was a citizen of the United States--Mr. Beer--who never entered upon his function because of non-participation of United States in the League of Nations. He was succeeded by M. Rappard (Switzerland) who upon retirement from the Section became a member of the Mandates Commission, and by M. Catastini (Italy) and M. de Haller (Switzerland). As a general rule only citizens of countries who did not hold mandates were employed in the Mandates Section in order to safeguard the free impartiality of the Staff.

To sum it all up it may be said that--within the frame work of the Mandates System, as it has been applied hitherto--the Council and the Mandates Commission have at their disposal a variety of appropriate means of obtaining information which, in general, constitute an excellent basis for the exercise of supervision over the mandatory administration, but that sometimes, in particular cases and exceptional situations they can

discharge their task only "within certain limits" unless they have recourse to more direct means of procuring information.

5. The Role and Work of the Permanent Mandates Commission

THE ROLE AND WORK OF THE PERMANENT MANDATES COMMISSION

The task entrusted to the Mandates Commission is a complex and delicate one.[4] That body has, in the first place, to undertake a careful and exhaustive examination of the whole mandatory administration, to consider the measures taken and, if need be, criticise them; secondly, it has to be careful not to increase the difficulty of the task of the Mandatory Powers by undermining their authority, to avoid giving rise to the slightest impression that it is setting itself up as a tribunal and, in fact, to refrain from doing anything which might be construed as a tendency to substitute itself for the Mandatory Powers.

Although under the terms of Article 22 of the Covenant the Mandates Commission has specific authority only to "receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates," nevertheless the work of the Commission has been surprisingly effective and significant. This result is do in part to the wisdom which has been displayed in appointing men-

bers of the Commission. Five members are citizens of non-mandatory states, and have shown no backwardness in criticising the mandatories. Four are citizens of mandatory states, chosen not as national representatives, but as experts on colonial questions. For instance, Sir Frederick Lugard, former British governor of Nigeria and author of books on Africa, was chosen as an experienced and enlightened colonial administrator, and has evinced admirable detachment in the criticism of British, as of other, mandates.

By means of questionnaires the Commission has elicited information on topics which the mandatories might have wished to leave untouched. By detailed comments on the annual reports it has suggested new policies, or better methods of achieving desirable ends. It has administered reproof--courteous but unmistakable--to Belgium, France, Britain or Japan, with no apparent discrimination between Great Powers and small. And often it gives praise, or expressions of its appreciation of commendable changes undertaken at its suggestion, no less courteously.

The range and spirit of the Commission's work cannot possibly be appreciated without sampling its reports. In commenting on the British report on Cameroons,[5] it draws attention to the "unsatisfactory condition of public health," and suggests that if it is difficult to secure British doctors, Great Britain should employ doctors of other nationalities. It "notes with satisfaction," in 1925, that France is "paying

special attention" in Togoland "to the development of vocational and agricultural training--a policy which coincides with the views expressed by the Commission last year". It "hopes" that South Africa will spend more money on native education of a practical kind. It "asks to be informed" whether slavery has been abolished in the Trans-Jordan area of the Palestine mandate, and hopes that more money will be provided for village schools in Palestine". It inquires why there is an increase in the quantity of gin imported into the British Cameroons in 1924, and asks that the next report on this area may "contain a clear explanation of any definite plan which the mandatory power may have for improving native agricultural methods, for guiding the moral and social evolution of native life, and for suppressing such customs as cannibalism, which are repulsive to humanity". It congratulates New Zealand on the constant decrease in the death rate in Samoa, but "is concerned to note the very high mortality" among prisoners in Belgian Urundi. Belgium is asked to explain whether the labor levy of 42 days' work per year required by native chiefs in the Belgian mandate, and the further requirements of forced labor for road work, are not inconsistent with the mandate. When it appears that some 6000 natives are employed in building the Midland Railway in French Cameroun, working a ten hour day, with only one white doctor to care for the sick, and that the death rate is 80 per thousand, the Commission expresses the desire that France should improve the medical service. South Africa is called upon to

give detailed explanations regarding land legislation in South West Africa, to show that the interests of the natives are not being overridden.

The Commission has also the function of considering petitions or complaints regarding the administration of mandates,[6] but up to 1925 this function has not been fruitful. In 1925, however, it suggested that its right of receiving petitions be interpreted with sufficient latitude to include memoranda and memorials of all kinds relating to the administration of the mandated territories.

Another potential function is the formulation and recommendation of general colonial policies--such as the encouragement of native education, improvement of public health, protection of the natives against forced labor and abusive exploitation. A bolder step, however, was proposed in 1925 by M. Orts, the Belgian member, when he suggested that the time had come for the Commission to call to the attention of all the mandatories the danger of making excessive demands upon native labor. "The vast programmes of public works", he said, "the railways planned to cover enormous distances, the large industries which were being set up, the mining and agricultural exploitation of the country, the new concessions which had to be worked at a profit--all these operations implied at every turn a new and pressing appeal for native labor". The results might be tragic. Natives taken far from their homes to labor on railways, plantations or mines, developed tuberculosis or other

diseases. The mortality was alarming. Another member pointed out that recent reports showed a decrease of the native populations. The Portuguese member thought that alcohol and syphilis, rather than work, caused the high mortality. M. Rappard observed that reliable statistics would tell the story: if they indicated excessive death-rates, it would be incumbent upon the administrators to explain the reason. Finally it agreed that a question to bring out this information should be inserted in a questionnaire.

Whether the Mandates Commission issues some general pronouncement on this topic or not, the fact that it can discuss it was significant of the spirit which the mandate system has tended to develop. Whether the Commission issues orders and general rules of policy or not, its criticism of mandate administration is not futile. Whether the jurisdiction of the Commission is legally extended to other colonial possessions, or all colonial possessions, or is restricted to the fourteen existing mandates, the influence of the system cannot be confirmed by artificial boundaries.

Leonard Woolf, a keen British critic of imperialism, advocating the extension of the mandate system to all subject peoples, wrote the pregnant sentence, "In fact, it is hardly conceivable that the mandate system, if honestly applied, and the old imperialism can exist side by side." That the "old imperialism" will surrender, or that the ten nations owning colonies will hasten to place their possessions in the hands of

the League, in the near future, only the most sanguine internationalist will dare hope. Yet it is true that the "old imperialism" and the new "trusteeship" cannot live together in so small a world as ours. The idea of trusteeship, the public criticism of administration in the mandates, and the careful study by the Mandates Commission of specific policies which benefit or injure the natives, must inevitably, though perhaps insensibly, influence the administration of colonies legally outside the mandate sphere, and thus bring imperialism more under the control of humane principles and international public opinion. As the French minister of colonies A. Albert Sarraut, declared in 1923, "Reforms accomplished in one place will inevitably penetrate elsewhere. Whether we like it or not, colonial questions have ceased to be purely national; they have become international, placed under the eyes of the world".[7]

Chapter 4

Aspects of The Mandatory Operations

ASPECTS OF MANDATORY OPERATIONS

1. Iraq ("A" Mandate)

The Mandatory for Iraq[1] (Mesopotamia), the most successful of the "A" mandates, was accepted by the British Government in 1920. The Arab Nationalist leaders who desired union or consideration of the Arab States bitterly resented both the breaking-up of the Arab area into several mandates and the subjection of their country to British administration. This resentment took the form of a fairly serious Arab rebellion in Mesopotamia. Convinced that the maintenance of an unpopular British Administration by crude military methods would be impossible, the British Government sent Sir Percy Cox to Mesopotamia with orders to conciliate the natives. An Arab Provisional Council of State was formed and following a referendum the Emir Feisal, ex-king of Syria who had been overthrown by the French, was declared King in August 1921.

The Mandate did not follow the ordinary course, however, which would have been for a Draft Mandate to be prepared and accepted by the Council of the League. Instead, the British

Government with the consent of the League, concluded with King Feisal a "Treaty of Alliance", signed on October 10, 1922, which contained the provisions that would otherwise have been incorporated into a mandate. In this Treaty religious freedom, the use of native languages in schools, the rights of minorities, the open door, are guaranteed as in an ordinary mandate. Great Britain undertook to provide the Kingdom of Iraq with advice and assistance, including military and financial aid, while on the other hand Iraq agreed "to be guided by the advice" of the British High Commissioner on "all important matters affecting the international and financial obligations and interests of His Britannic Majesty". By a supplementary agreement the number of British officials and their salaries were fixed--this relationship being pretty clearly what the provisions of Article 22 of the Covenant intended for "A" mandates. No less in harmony with the Covenant was the provision in the Iraq treaty that Great Britain would use the "good offices" to secure admission of Iraq into the League of Nations "as soon as possible" thereby terminating the treaty and the mandatory tutelage. If Iraq should not be admitted to the League, the treaty would remain in force twenty years. By a subsequent agreement, in 1923, the twenty-year term was reduced to four (dating from the ratification of peace with Turkey, and therefore expiring in 1928). In 1925 however, in order to secure Mosul under the terms of the League Council's decision, Great Britain agreed to renew for twenty-five years her treaty obli-

gations toward Iraq, or in other words, to prolong the mandatory relationship for twenty-five years, subject to the possibility that it might be ended earlier by the admission of Iraq to the League.

This method of fulfilling the principle of mandatory trusteeship was approved by the League. On September 27, 1924 the Council of the League accepted the Iraq treaty with supplementary British pledges, as giving effect to Article 22 of the Covenant, it being understood that an annual report would be made on this as on other mandates, that the terms should not be altered save with the consent of the Council and that British obligations should terminate when Iraq enters the League.

In 1927, the year 1932 was named as the date for Iraq's membership in the League of Nations. Impatience at mandatory control still continued, however, despite the fact that lack of trained personnel for government service proved the necessity of British supervision. Externally the new state was involved in disputes with Turkey over the Mosul area, and with Saudi Arabia over the establishment of boundaries.

On June 1930, a New Anglo-Iraqi Treaty signed at Baghdad "on terms of complete freedom, equality and independence" and valid for twenty-five years, provisions were made for full, free and frank consultation on all matters of foreign policy which might affect the common interest of the two countries, and for aid should either party be involved in war. Responsibility for internal order and external defense rested with the

King of Iraq who, however, recognized that the maintenance of essential communications was in the common interest of both parties and undertook to provide air bases at or near Basra and west of the Euphrates; British troops were maintained at Mosual and Kirard. A Financial Agreement of August 13, 1930, transferred to Iraq the railway system, the aerodromes and part of the port of Basra, while a Judicial Agreement of March 1931 provided for the abolition of capitulations (special privileges allowed by agreement, originally with the Turkish Government) and established a common system of Justice for Iraqs and foreigners.

In Iraq, under the British Mandate, the administration of justice was extended to remote areas; in extending the railway system, in encouraging agriculture, in laying foundations for a modern educational system, in providing hospital facilities and combatting epidemics, the country achieved a prosperity beyond any previous attainment.

On October 3, 1932, Iraq was admitted as a State Member of the League of Nations. The High Commissioner was replaced by a British Ambassador and the transfer of British administration into Iraqi hands took place gradually. It was felt in certain quarters that 1932 was early for the abolition of the Mandate and the Permanent Mandates Commission expressed its doubts. Conditions were formulated under which the termination of the Mandate would be approved, however, and these included guarantees for the effective protection of racial, religious

and linguistic minorities.

2. Tanganyika ("B" Mandate)

TANGANYIKA ("B" MANDATE)

The main object of the Mandate which Britain received for Tanganyika[2] in 1922 was to assist the Africans to stand on their own feet. The Territory had suffered considerably in the course of the First World War and the first task of the British Government was administrative and economic reorganization.

Administration was at first carried on by a Governor with the assistance of an Executive Council. In 1926, a Legislative Council was constituted, and this consisted of thirteen official members and twelve members holding no Government position of whom three were Indians and two Africans. The British began almost at once to restore the old tribal organizations, which had largely been broken down under the Germans, gradually transferring control over local affairs to the traditional authorities. This system of indirect rule was felt to be the best means by which the Africans could be trained to take their full share in the government of the country, and Native Authorities with Native Courts and Treasuries, have been given continually increasing powers as they have gained experience.

The Mandate required that, in relation to land, native laws and customs should be taken into consideration, and that the interests of the Africans should be safeguarded. In 1923, all public lands were declared to be subject to the disposition of the Governor who was to administer them for the use and common benefits of the natives, except for land held before that date by non-natives. Further alienation of land to non-natives was carefully controlled.

Tanganyika's main crops are sisal, cotton, and coffee. The minor crops are ground-nuts, copra, sesame, rice, sugar, and tea. In 1931, native production accounted for nearly 70 per cent of the coffee, the whole of the ground-nuts, and 95 per cent of hides, skins, and rice and other grains.

The development of mining has taken place almost entirely under the Mandate. Prospecting for gold was carried out by the Germans, and production had started at one mine in 1914. Gold production reached 9,070 ounces in 1929 and had risen to 82,000 ounces in 1938. Salt, tin ores and mica are also mined.

Domestic slavery had been allowed to continue under the Germans, but was abolished by the British in 1922. Forced labor was also forbidden in accordance with the terms of the Mandate and of the International Convention Concerning Forced Labor of 1931.

The aim of education under the Mandate was both to raise the standard of character and of efficiency among the bulk of

the population, and to provide for the training of those who would be required to fill posts in the administrative and technical services as well as those, who, as native authorities, would occupy positions of exceptional trust and responsibility. In 1944, there were 72 Government schools, 1,030 missionary schools of many denominations and nationalities assisted by Government grants, 4 Moslem and 122 Native Administration Schools.

Any description of the "B" mandates would be incomplete without mention of one more typical feature, the detailed guarantee of the open door. Under the terms of the Mandate, Britain was required to maintain for all Members of the League "complete economic, commercial and industrial equality". Britain was, besides, allowed to form a customs-union between Tanganyika and the two neighboring British territories of Kenya and Uganda. It was the duty of Britain to see that the Mandated territory should find no greater difficulties in disposing of its products than did at least her other dependencies. This she did by granting to Tanganyika the same preferential treatment of imports into the United Kingdom as the rest of the Empire. Some of the Dominions also granted preference on the basis of the Ottawa agreements. This arrangement was held by the Permanent Mandates Commission to be in accordance with the terms of the Mandate.

The British Treasury made direct contributions to Tanganyika's finances. Between 1929 and 1939 the territory re-

ceived £95,683 by way of loans, and £741,100 by way of free grants. Under the Colonial Development and Welfare Act of 1940 grants amounts to £556,608 were made between 1940 and 1946. This fact is more interesting in view of the cost of the mandates to the mandatories. In Tanganyika there have been regular deficits, to be defrayed by the British taxpayers.

3. Cameroons and Togoland ("C" Mandates)

CAMEROONS AND TOGOLAND ("C" MANDATES)

Mandates over separate areas of the German territories of the Cameroons and Togoland[3] were given to Britain and France.

The Terms of the British Mandates provided that both the Cameroons and Togoland might be administered as integral parts of the Mandatories territory and might be constituted into a customs, fiscal or administrative union with adjacent territories. The Cameroons were, accordingly, attached to Nigeria, and Togoland to the Gold Coast.

The ex-German estates were disposed of as in Tanganyika, and alienation of further land was made subject to Governmental approval, which could only be given where the rights of Africans were not infringed.

The system of indirect rule was introduced and Native Authorities, with Native Courts and Treasuries have been established in both territories. There are Government, mission and Native Administration schools providing primary, secondary, and technical education, and pupils may proceed for higher education to the colleges in Nigeria and the Gold Coast. The medical and

sanitary services include hospitals, dispensaries and maternity and child welfare work.

Compulsory labor is forbidden except on communal services, for which it is paid and regulated by legislation. The plantations in the Cameroons are regularly inspected by medical and sanitary officers, and most of them maintain their own hospitals.

In both territories there are good roads maintained by the Government and the Native Authorities, and there is transport by river in the Cameroons.

In 1937 the Cameroons took £39,000 of imports from the United Kingdom, £25,000 from other British countries, and £266,000 from other countries. In the same year exports amounted to £33,000 to the United Kingdom and £485,000 to other countries.

In 1938, the total value of imports into Togoland was £16,065 and that of exports £86,974.

The effect of the criticism of the Permanent Mandates Commission on the annual reports of the Mandatories was of signal importance in bringing about many improvements in the mandated areas. In commenting on the British report on Cameroons in 1924, the Permanent Mandates Commission drew attention to the "unsatisfactory condition of public health", and suggested that if it was difficult to secure British doctors, Great Britain should employ doctors of other nationalities. It also inquired why there was an increase in the quantity of gin imported into

the British Cameroons in 1924 and asked that the next report on that area may "contain a clear explanation of any definite plan which the mandatory may have for improving native agricultural methods, for guiding the moral and social evolution of native life, and for suppressing such customs as cannibalism, which are repulsive to humanity".

PART III

THE INTERNATIONAL TRUSTEESHIP SYSTEM - Its Beginnings

Chapter 5

The Origin of the International Trusteeship System

THE INTERNATIONAL TRUSTEE SYSTEM OF THE UNITED NATIONS

1. The Preliminary Negotiations.

The International Trusteeship System of the United Nations is provided for in Chapters XI, XII, and XIII of the Charter. No other part of that historic document represents as much time, effort and difficulty as was involved in producing these Chapters. Many words and phrases represent weeks of labor, discussion and debate. The story of how these Chapters were developed is an interesting bit of history. It is also of considerable importance as an indication of how the system may develop in the future.

Originally it was intended that the United States draft proposals for the Dumbarton Oaks Conference in August 1944 would include provisions for an international trusteeship system. Because of strong representation of the United States War and Navy departments, the subject of trusteeships was entirely eliminated from the United States proposals and the Dumbarton Oaks discussion. The reason for these representations is clear.

At that time, the strategy of the Pacific war was not yet fully developed, and great importance--in retrospect, perhaps undue importance--was attached to Russia's early entry into the war against Japan. It was believed that any discussion of a trusteeship system would bring up the highly controversial question of the Pacific islands, and it was considered no time to get involved in an argument with Russia about bases in the Pacific. Actually, the trusteeship system was first discussed by the Big Three at the Crimea Conference in February 1945.

At this conference it was agreed:

(a) that the great powers should submit agreed trusteeship proposals at the San Francisco Conference in May;

(b) that trusteeship should be applied to existing mandates, to territory taken from the enemy and to any other territory voluntarily placed under trusteeship and,

(c) that specific territorial settlements would not be discussed before or at San Francisco.

The latter provision reflected the United States military view, which had previously eliminated the whole subject from discussion at Dumbarton Oaks.

During the next three months, trusteeship was a very lively issue in Washington. In fact, the debate was so active that the United States proposals were completed only at the last minute, and the Big Five first saw them at San Francisco.

There were many conflicting views in Washington on this

complicated subject. Basically, however, the delay was caused by some of the President's most trusted advisers stoutly maintaining that, if the subject were discussed at all, it would be impossible to avoid implied commitments, concerning the Pacific islands. These islands, in their opinion, should become bona fide United States territory and not "trust" territories. The opposing view emphasized the definite agreement at Yalta not to discuss specific territories at San Francisco and stressed the fact that, without some form of trusteeship system to take over the mandates, the United Nations could neither fully replace the League of Nations nor avoid endless complications in the peace settlement. Eventually, the latter view prevailed, and the United States trusteeship proposals containing the substance of most of the provisions finally adopted in the Charter, were presented at the Conference.[1]

The trusteeship provisions of the Charter were vigorously debated at San Francisco. The United States proposals, made with due consideration for the problem of the Pacific islands, provided a special status for "strategic areas" in trust territories. This feature was accepted only after long debate. Russia, with no overseas possessions, and for once supported by China, argued for the independence of "dependent" areas. Australia argued that, under certain conditions, member states should be compelled to place their colonies under the trusteeship. The present mandatory powers and the Jews of Palestine argued for and obtained provisions which conserve their rights

under the mandates until replaced by trusteeship agreements. The United States supported and secured in modified form the "open door" in trust territories. Those disputed were among the last to be resolved at San Francisco, but eventually, the Charter, with its trusteeship provisions, was agreed upon and signed June 26, 1945.

Chapter 6

The Principles of the International Trusteeship System

THE PRINCIPLES OF THE INTERNATIONAL TRUSTEESHIP SYSTEM

1. The Basic Law

Three Chapters of the Charter, XI, XII and XIII, developed after so much travail, constitute the fundamental principles and basic law of the international trusteeship system.[1]

Chapter XI, consisting of Articles 73 and 74, is a unique charter of colonial principles applying to all dependent territories of the members of the United Nations. It lists obligations of each of the signatories "to promote to the utmost the well-being of the inhabitants of its territories which have not yet obtained a full measure of self-government". It provides for a system of reports. Its principles are not entirely new, nor are they enforceable, but as written in this Chapter, they are significant in providing a sound and widely agreed basis for the future inclusion of colonial areas in the trusteeship system. This Declaration Regarding Non-self Governing Territories goes beyond any international agreement that has hitherto been in force in the definiteness and scope of its provi-

sions.

The purpose of these Articles and the scope of their application are to be distinguished sharply from those of the Articles of Chapters XII and XIII which have in view the creation of a special international regime for certain territories and which apply only to those territories that are placed under this regime by agreement of the interested states.

Chapter XII, consisting of Articles 75 to 85 inclusive, constitutes the specifications of the system. Briefly, its objectives are to further international security; to promote progress toward self-government; to encourage respect for human rights and to insure equal treatment of members of the United Nations. The system applies to territories placed there under by "subsequent individual agreement".

Eligible territories are those now under mandate, those detached from enemy states and those voluntarily placed under the system by the parent state.

Terms of trusteeship must be agreed upon "by the states directly concerned". The Trustee, or administrative authority, may be one or more states or the United Nations. The agreement may designate all or part of a trust territory as a "strategic area". As regards the United Nations, such strategic areas are under the cognizance of the Security Council, and territories not so designated are under the cognizance of the General Assembly.

Chapter XIII, consisting of Articles 86 to 91 inclusive,

covers the Trusteeship Council, which is established as one of the "principle organs" of the United Nations. Membership in this Council is equally divided between states administering trust territories and those which do not, but it must include the five big powers.

The Trusteeship Council consists of three categories of members:

(1) Members of the United Nations administering trust territories;

(2) Members of the United Nations mentioned by name in Article 23, that is, the original permanent members of the Security Council, which are not administering trust territories, and

(3) as many additional members elected for three-year terms by the General Assembly as may be necessary to make the number of members administering trust territories equal to the number which are not.

This means that the total number of members of the Trusteeship Council will be variable, depending in the last analysis upon the number of members which are made possible for the administration of trust territories.

Article 89 of Chapter XIII deals with the voting power, as follows:

Section 1. "Each member of the Trusteeship Council shall have one vote.

Section 2. Decisions of the Trusteeship Council shall

be made by a majority of the members present and voting."

2. A Fault in the Membership Structure

A FAULT IN THE MEMBERSHIP STRUCTURE

The manner in which the Trusteeship Council is constituted under Article 86 may lead to considerable difficulty. Trouble in constituting the Trusteeship Council according to the terms of Articles 86 and 89 may be avoided only as long as there exist a sufficient number of territories to be administered. Should the number of territories to be administered be reduced to a few, conditions may well arise which would make the compliance with the terms of Articles 86 and 89 impossible. To illustrate this point--from the purpose and intention expressed by the terms of Articles 86 and 89--the following conclusions may reasonably be drawn:

First--that all members administering trust territories--whether mentioned by name in Article 23 ("permanent") or not be placed in category (a).

Second-that all members mentioned by name in Article 23 (permanent) not administering trust territories be placed in category (b) since these "permanent" members, whetner administering trust territories

or not, must become members of the Trusteeship Council.

Third- that members elected by the General Assembly--sufficient in number to maintain a balance between those members who administer trust territories and those who do not--shall be placed in category (c).

Fourth-that since each member of the Trusteeship Council shall have one vote--the obvious purpose being to insure an equal division in the voting power between the one group of members administering trust territories (category a) and the other group not administering trust territories (categories b and c) it follows that the total number of members in category (a) must equal the total number of members in categories (b) and (c).

It follows from the above conclusions, if they are valid, that at least three conditions may ultimately arise which would make compliance with the above terms impossible. These conditions are as follows:

Condition 1. When the number of members administering trust territories are four or less and none of such members are any of the said permanent members mentioned by name in Article 23.

Condition 2. When the number of members administering trust territories are two or less, and both of them, in the event there are two, being

two of the five permanent members mentioned by name in Article 23, or, if there is one member administering a trust territory and that one is one of the five permanent members.

Condition 3. When there are no trust territories.

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To prove the validity of the conditions enumerated above, let it be assumed for the purpose of further illustration, that the following assumed situations actually exist:

Situation assumed to exist under Condition 1.

When the number of members administering trust territories are four or less and none of such members are any of the said permanent members mentioned by name in Article 23.

Condition 1.

Category (a) Members Administering Trust Territories	Category (b) Members Mentioned by Name in Article 23	Category (c) Members in neither of Categories (a) or (b)
Belgium Argentina Turkey Greece	Which four of the five permanent members shall be placed in this category? To place all five would disturb the balance of equal division as provided in Article 86.	

Situation assumed to exist under Condition 2.

When the number of members administering trust territories are two or less, and both of them--in the event there are two--are two of the five permanent members mentioned by name in Article 23; or, if there is one member administering a trust territory and that one is one of the five mentioned by name in Article 23.

Condition 2.

China France	Which two of the remaining three permanent members shall be placed in this category? To place all three would once again disturb the balance.

Situation assumed to exist under Condition 3.

When there are no trust territories.

Condition 3.

No trust territories	No provision being made for this contingency, what happens to the Trusteeship Council?

The terms and conditions of Article 86 may be complied with as it is now phrased only so long as the following conditions exist:

Condition 4. There must always be more trust territories than there are permanent members, or, there must be not less than five trust territories assuming that none of the five permanent members mentioned by name in Article 23 are administering them.

Situation assumed to exist under condition 4.

Condition 4.

Category (a) Members Administering Trust Territories	Category (b) Members mentioned by Name in Article 23	Category (c) Members to effect balance between Categories (a) and (b)
Belgium	China	Norway
Brazil	France	
Denmark	United Kingdom	
Greece	U.S.S.R.	
Netherlands	United States	
Turkey		

The above situation demonstrates a perfect balance between the total number of members in category (a)--those administering trust territories and categories (b) and (c)--those members not administering trust territories and therefore meets the requirements of Article 86.

Situation assumed to exist under Condition 5.

Condition 5.

France	China	Belgium
United Kingdom	U.S.S.R.	
United States		

Both of the above--Conditions 4 and 5 show an equal division between the two member categories and, consequently of the voting power of members administering trust territories and those which do not. This same balance of equal division as contemplated by Article 86 does not exist in the situations described under Conditions 1, 2, and 3.

3. A REMEDY

(To Correct Fault in Membership Structure)

A careful study of the United Nations Charter discloses beyond question the fact that the "five permanent members" mentioned by name in Article 23 intend to become "permanent fixtures"--of dominant, or at the very least of equalizing influence--in all vital functions established or to be established under the Charter. These permanent members have already indicated by their actions and deeds--both prior and subsequent to the San Francisco Conference--that they will not relinquish any of their individual sovereignties nor will they transfer

their right of representation to any other State or Member of the United Nations. Since by Article 89 each member of the Trusteeship Council has one vote, a compliance with the terms of Article 86 as it is now constituted would be impossible, under the Conditions assumed to exist in the situation described under Condition 1. To place all five permanent members in category (b) would serve to give this group five votes as against only four votes to the members of Category (a) administering trust territories. This same dis-equilibrium in the voting balance would also apply under the Condition 2 situation if the five permanent members mentioned by name in article 23 must automatically become members of the Trusteeship Council in one category or another. For, to comply with the terms of Article 86 under the Condition 2 situation, since China and France are administering trust territories and since all five permanent members must become members of the Trusteeship Council, the other three members mentioned by name in Article 23--United Kingdom, United States and Union of Soviet Socialist Republics must be placed in Category (b). This arrangement would serve to give the members of Category (b) three votes as against two votes for the two members administering trust territories in Category (a).

The fact that there is only a remote possibility that Conditions 1, 2, and 3 may occur or that they may never occur at all is of no particular consequence if the validity of the Charter itself is considered. It is a well established princi-

ple of law that any agreement which contains a fault which goes to the root of the contract is voidable. The United Nations Charter is in essence an agreement between the signatories thereunto whereby the said signatories undertake to carry out the terms of said agreement in consideration of their mutual compliance. The Trusteeship Council is specifically established as one of the "principle organs" of the United Nations by the terms of Article 7 of Chapter III of the Charter and is therefore of the essence and root of this agreement. Obviously, the fault described above should be corrected to insure the validity of the Trusteeship Council and consequently of the United Nations Charter.

The faults described under Conditions 1 and 2 may be removed and the solution appears to lie as a choice between two alternatives: the first is for one of the five permanent members placed in Category (b) to give up or relinquish its sovereignty and refrain from voting. This arrangement would then serve to balance the voting power equally between the members of Category (a) and Category (b) and would meet the requirements--at least the purpose and intention of Article 86 and 89. The question here is would any one of the Big Five relinquish its sovereignty?

The second alternative appears to point in the direction of an amendment to Article 89 which would provide for a change in the voting power in the event of a dis-equilibrium in the number of members as between those administering trust terri-

tories and those which do not.

In the situation described under Condition 3--when there may be no trust territories to administer--an amendment applicable to Article 86 should be passed establishing an "interim Trusteeship Council" since no provision is now included to remedy such a situation in the event it may arise. Considering the fact that the "basic objectives of the trusteeship system" as described in Article 76 of Chapter XII is "to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence...." it is quite conceivable that the number of trust territories to be administered shall begin to diminish and that gradually the Conditions illustrated above may all in turn come to arise. To overcome the faults described, the following amendments to the United Nations Charter are offered:

Proposed Amendment to Chapter XIII, Article 86, Section 1.

Art. 86-3. In the event that there are no trust territories to be administered as hereinbefore provided, and for the purpose of maintaining the Trusteeship Council in full force and effect during such interim, the five members mentioned by name in Article 23 and referred to in Clause (b) of Article 86, Section 1, shall constitute an "interim Trusteeship Council" pending a change in the status of the trust territories to be administered.

Proposed Amendment to Chapter XIII, Article 89.

Art. 89 Sec. 3. In the event that there exists a dis-equilibrium as between the total number of members administering trust territories as provided under the terms of Article 86, Section 1, Clause (a) and the total number of members mentioned by name in Article 23 not administering trust territories who are to become members of the Trusteeship Council as provided by Clause (b) of said Article 86 Section 1 aforesaid, so as to cause an excess in the number of the members of those in Clause (b) over the number of members in Clause (a), it is hereby provided that the voting power--in the event of such a dis-equilibrium--as provided in Article 89, Section 1 of said Chapter XIII, shall be waived and that in place thereof, the following substitute voting power shall be in full force and effect:

Each member, of the total number of members established under said Clause (b), shall have a fractional part of one vote so that the total vote of the combined members of said group (b) shall equal the total vote of the combined members established under said Clause (a); that said individual fractional voting interest, of each member of group (b), may be exercised by each member individually, in groups of two members or more, or, all in one combined vote, provided, however, that regardless of what combination or combinations of individual or, collective voting or pooling of votes, or both, may be employed, the total number of such permanent members contained in group (b) and the total vote represented by them shall, for

all purposes, be computed so as to insure an equal division both as to the number of members as defined in Clause (c) of Article 86, Section 1 of Chapter XIII, and as to the number of votes as defined in Article 89, Section 1 of Chapter XIII.

3. A Comparison

A COMPARISON

Under the Covenant of the League of Nations, the Permanent Mandates Commission consisted of experts appointed by the Council, the majority of members being nationals of non-mandatory states. The trusteeship Council is organized on a different principle. It is composed in the same manner as the Economic and Social Council and consists of Members of the United Nations. It is referred to in Article 7 as one of the principle organs of the United Nations. It is from the point of view of the Organization a more independent and important body than was the Permanent Mandates Commission. It is intended, however, to function under the authority of the General Assembly and is, therefore, responsible to it in the exercise of its functions.

Article 86, Section 2 provides "Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein". This suggests that from the point of view of the expert character of its members the Trusteeship Council is not to differ materially from the Permanent Mandates Commission. A "specially qualified person" would seem to be

for all practical purposes an expert, that is, a person who by virtue of special training and experience is entitled to have his opinion deferred to on all matters which come before the Council for action pertaining to trust territories and their administration.

The powers that are given to the General Assembly and, "under its authority", to the Trusteeship Council by the terms of Article 87, Section 1, cover those powers which were vested in the League of Nations Council and the Permanent Mandates Commission under the Covenant of the League of Nations and in addition make provisions for periodic visits to the trust territories which were not permitted under the League mandates system. It was the contention of the mandatory powers that inquiries and investigations "on the spot" conducted under the direction of the Permanent Mandates Commission would have the effect of weakening the authority of the mandatories concerned. The withholding of this power deprived the Commission of an important means of establishing the facts which were necessary to the adequate performance of its duties. It made the Commission largely dependent upon the reports and oral explanations of the representatives of the mandatory powers.

While the General Assembly and the Trusteeship Council may make provisions for periodic visits to the trust territories, there is one important provision attached to the grant of power, namely that the visits must be carried out "at times agreed upon with the administering authority". This makes it possible

for the administering authority to prevent any such visit from taking place, but in view of the probable reaction to such a refusal it is unlikely that any administering authority which is a Member of the United Nations will resort to such extreme measures. This provision then represents a definite advance over the League system.

The use of the words "under its authority" emphasizes the Trusteeship Council in performing the functions enumerated in Article 87 is to act under the direction and supervision of the General Assembly. The power to "consider reports" is to be understood as involving the power to discuss and to make recommendations.

The power expressly accorded to accept petitions and examine them "in consultation with the administering authority" was not explicitly given by the Covenant to any organ of the League, but the Council adopted the procedure in 1923. Such petitions were frequently presented. Certain conditions were laid down to which petitions must conform in order to be considered. The Provisional Rules of Procedure for the Trusteeship Council, recommended by the Executive Committee to the Preparatory Commission, contained rules with regard to petitions which were obviously inspired by League experience. Thus Rule 38 provided that the Council should reject petitions or parts thereof "(a) if they are trivial in nature, couched in abusive terms, or submitted anonymously; and (b) if they contain complaints which are incompatible with the provisions of Chapters XII and XIII

of the Charter or the trusteeship agreements". The Provisional Rules admitted the possibility of oral as well as written petitions.

By the terms of Article 88 each administering authority is obligated to make an annual report to the General Assembly upon the administration of the territories for which it is responsible. This differs from the League system in that the report goes to the Assembly directly instead of to the Council. However, in the case of areas designated as strategic the practice will follow that of the League since it will be to the Security Council that the administering authority will presumably report in such cases.

In order to secure uniform reports and to be certain that all the points upon which information is desired are covered, the Trusteeship Council is given the power, in fact is required, to formulate a questionnaire upon which the report of the administering authority is to be based. This, too, represents a considerable advance over the League system and if the terms of the Article are carried out, reports submitted by the administering authorities should be much more satisfactory than they were in many cases under the League mandates system. It is to be noted that the Article specifies in some detail the content of the questionnaire, inserted largely upon the insistence of the smaller powers that full publicity will be given to the record in carrying out terms of trust agreements.

While leaving a certain measure of discretion to the

Trusteeship Council Article 91 makes it the duty of the Council to avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectfully concerned. This Article represents another attempt to secure proper co-ordination of the activities of the organs of the United Nations and of the specialized agencies in their relations with the United Nations Organization. This source of information available to the Trusteeship Council is comparable to the information furnished by the Mandates Section of the Secretariat to assist the Permanent Mandates Commission under the terms of the Covenant of the League of Nations.

PART IV

THE INTERNATIONAL TRUSTEESHIP SYSTEM - Its Culmination

Chapter 7

The Preliminary Meetings and Conclusion

THE LONDON AND NEW YORK ASSEMBLY MEETINGS

The Trusteeship System having been provided for in the Charter as outlined above, the next steps in its development took place in London. A commission of the United Nations met there from August till December 1945 to prepare for the first session of the United Nations in January 1946. Once again trusteeships proved a difficult and controversial subject. It took more time than three months to agree on a recommendation that the Assembly should call upon the States holding League of Nations mandates to initiate the agreements by which such mandates would be placed under the trusteeship system. This the Assembly did at its first meeting in London on January 10, 1946.

The situation on the eve of the Assembly's second meeting in New York scheduled for October 23, 1946, indicates some progress however. Subject to negotiating the necessary agreements, Great Britain has offered for trusteeship its mandates for Palestine, Tanganyika, British Togoland and the British Cameroons. New Zealand, Australia, Belgium and France (with reservations) have done likewise. South Africa, however, has

indicated that Southwest Africa should be incorporated into South Africa.

On the other hand, no proposals have been made to the United Nations concerning former Italian colonies, and no colonial nation has volunteered to place any of its colonies under the system.

It will be noted that the Charter provides that the term of trusteeship for each territory "shall be agreed upon by the states directly concerned" (Art. 79). This wording has been subject of much debate and learned disputation, but the explanation is simple. The United States found it so difficult to define who shall be involved in the trusteeship agreements that this phrase was deliberately inserted as a means of postponing the decision until after the San Francisco Conference. Actually, each case will be decided on its merits and, in the proposals so far made, there has been no great difficulty in this respect. For example, British proposals for Tanganyika were sent to Belgium and South Africa for concurrence and to the United States, Russia and China for information. It would seem that, if there is to be any considerable difficulty as regards the "states directly concerned", it will involve the Pacific islands and Italian colonies.

Notwithstanding the lofty principles enunciated in Chapter XI, there are no offers of colonies at this time nor are there any in prospect for some time to come.

In connection with the Pacific islands, both Japanese and

Japanese mandates there is still considerable differences of opinion in the United States as to whether they should be annexed or "trusteed". The argument is largely academic, however. In both cases they would be available to the United Nations, if that organization works. If it fails, they would serve as bases for the United States.

As regards Italy's African colonies, Trieste and Korea, the Trusteeship System has already become involved in the "peace settlement". These problems seem insoluble for the moment, and must await the future, but they are of serious concern to all who wish the trusteeship system full and early success.

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On October 23, 1946 the General Assembly gathered in New York City for the second part of its first session and for its first meeting in the United States. Late in the afternoon the delegates met in Flushing Meadow, Lake Success, N. Y. representing fifty-one member nations. The meeting was called to order by Paul-Henri Spaak, President of the Assembly. President Truman in his speech of welcome touched on the basic problems that have aggravated international dealings in the recent past.

Of the three great Councils of the United Nations, the Security Council, the Social and Economic Council and the Trusteeship Council, the first two are already functioning. The third, the Trusteeship Council, had not yet been created

and one of the principle tasks of the present session of the General Assembly is to create it.

Under the United Nations Charter, the Trusteeship Council is the agency that will deal with "trust territories" which is the official name for these non-self-governing areas of the world that may be placed under United Nations supervision.

When the Trusteeship Council is set up, it will include the five Great Powers (the United States, Great Britain, Russia, France and China), and any other nations administering trust territories and also as many countries as may be necessary to create an even division between administering and non-administering countries.

The Council (Trusteeship Council) is to be set up with eight initial members--Britain, France, Australia, and Belgium as administrative powers (category (a) under Article 86 of Chapter XIII of the Charter), with Russia, United States and China in category (b) and possibly Poland or some Latin-American country in category (c) as non-administrating powers.

Victor Hoo of China, Assistant Secretary-General for the Trusteeships is to be to the Council what Trygve Lie, the Secretary-General, is to the United Nations, as a whole.

Trusteeships will be seven in number at the start under the Trusteeship Council. Britain is handing over title to Tanganyika, Togoland and the Cameroons; France is contributing her share of Togoland and the Cameroons, all former German colonies in Africa; Australia is passing over Papua--a part of

New Guinea--and Belgium has submitted an agreement on Ruanda-Urundi, in the heart of Africa. These territories, all former mandates under the League of Nations, are likely to be the only ones submitted for trusteeship within the year.

Not covered by agreements as yet are the overseas possessions of Italy and Japan and three important mandated areas. The four areas which are complicating the Trusteeship problem at this time are as follows:

South West Africa: The Union of South Africa, the mandatory power, declares that it will offer no trusteeship agreement, since the area should be--and wants to be--annexed to the Union.

Palestine: The United Kingdom, as the mandatory, has submitted no draft agreement pending the outcome of scheduled Arab-Jewish talks on the future status of Palestine.

Nauru: Australia, administrator of this small island just below the Equator, intends to make no trusteeship proposal until the whole question of disposition of the strategic Pacific islands has been settled.

The Former Japanese Mandate: The United States, which is occupying the islands, has proposed a trusteeship that would establish them as "strategic areas" under American control, subject to the Security Council.

2. Establishment of Trusteeship Council

ESTABLISHMENT OF TRUSTEESHIP COUNCIL

On December 14, 1946, the United Nations General Assembly completed the action necessary to bring into existence the Trusteeship Council.

Under Article 86 (a) of the United Nations Charter, Australia, Belgium, France, New Zealand and the United Kingdom became members of the Trusteeship Council by virtue of the fact that they were named administering authorities under the eight trusteeship agreements approved by the General Assembly on Friday night, December 13, 1946.

China, the United States and the Soviet Union became ex-officio members of the Trusteeship Council in accordance with Article 86 (b) of the Charter, which provides that those permanent members of the Security Council (mentioned by name in Article 23 of the Charter) that are not administering trust territories shall be members of the Trusteeship Council.

This left two vacancies under the provisions of Section (c) of Article 86 which provides that as many members should be elected for a term of three years to the Council by the General

Assembly as might be necessary to divide its membership equally between nations administering trust territories and those who do not.

On the first ballot Mexico received 36 votes and Iraq 34, out of 47 nations participating. Since both had received more than the required two-thirds, H. Spaak, President of the General Assembly declared them duly elected members of the Trusteeship Council. Mr. Lie, Secretary-General of the United Nations was then directed to convene the first meeting of the Trusteeship Council before March 15, 1947.

The General Assembly at the same time requested the Union of South Africa to submit a trusteeship agreement for South West Africa, thereby rejecting the Union's proposal to annex the territory.

Chapter 8

The Problem in the Pacific

THE PROBLEM IN THE PACIFIC

1. Strategic Areas.

Articles 82 and 83 of Chapter XII of the United Nations Charter provide for a special regime for those areas in which a Member or Members of the United Nations or the United Nations as a group, may have special interests of a strategic character. The interests in question may presumably result from either the defense requirements of a particular state or states or from the needs of the Organization as a whole for maintaining peace and security as determined by the Security Council.

Strategic areas will receive the same guarantees as other trusteeships, but will not be subject to the same scrutiny by all members of the United Nations. These regions will be directly under the Security Council instead of the trusteeship body. Matters affecting native populations, however, may be referred to the Trusteeship Council which can bring them to the attention of the General Assembly, thus assuring world-wide publicity.

Man power of the strategic trusteeships may be used on a

volunteer basis to "carry out the obligations of the Security Council". Material resources of these areas also may be employed for the maintenance of world peace.

Such exploitation will be at the discretion of the administering power. Reports to the Trusteeship Council are not required on strategic areas. The United Nations cannot order inspections. These territories are not open necessarily to the trade of all members of the United Nations.

Areas considered of strategic importance include the Pacific islands that the United States of America captured from the Japanese. The Union of South Africa regards the mandate of South West Africa as of vital importance to African security. Great Britain has not indicated the final disposition of the Mandate of Nauru, and islands in the Pacific, important because of its nitrates. Australia considers New Guinea and Manus in the Admiralties, to the north of the Australian territory of Papua, essential to her defense.

Colonies and territories of the world empires will be affected by the trusteeship system of the United Nations and may, quite possibly, be included under the provisions of Chapter XII as strategic areas. These include approximately 107 territories administered by the six colonial powers, of which 42 are under Britain, 13 under France, 7 under the United States, 2 under the Netherlands, 1 under Belgium and 1 under Australia. The United States, France and Australia already have reported to the United Nations on conditions in colonies and dependen-

cies. Great Britain, at the last report, is to continue the practice started under the League of Nations.

2. The United State's Position in the Pacific

THE UNITED STATE'S POSITION IN THE PACIFIC

Thus far the official position of the United States concerning the islands in the Pacific now occupied by them is that since no peace treaty with Japan has been signed, nothing can be done about the mandates. There appears to be every indication that the final position of the United States on this vital issue will be a compromise between the policy advocated by the military departments and that put forward by the State Department.

There is common agreement that the United States not only will continue to be involved in Pacific affairs in the future, but will also acquire, as a by-product of the Second World War, responsibility for the administration of a large number of Pacific islands beyond those which they now occupy.

The islands involved are, first, United States' current possessions, and second, those Japanese and Japanese mandated islands which will come under the control in the future.

At present, America's possessions in the Pacific are the Aleutian Islands in the north, an integral portion of the Terri-

tory of Alaska; the Hawaiian Islands, Guam, Wake, Kure, Midway, Johnston, Sand, Kingman Reef and Palmyra in the central Pacific; and Eastern Samoa, Howland, Baker, Jarvis, Canton and Enderbury (the latter two being jointly controlled by Great Britain and the United States) in the South Pacific. The Territories of Alaska and Hawaii are under the jurisdiction of the Department of the Interior, as are the relatively unpopulated islands of Howland, Baker, Jarvis, Canton and Enderbury. All other United States islands in the Pacific have been assigned, by executive order, to the Secretary of the Navy for administrative purposes.

It is not certain which Japanese islands will come under American control when the territorial settlement of the war in the Pacific is made. At present the United States military forces are maintaining military government in all the outlying Japanese islands except the Kuriles and Sakhalin, where the Russians are in command, and Formosa, which is under Chinese control. As between the Army and the Navy, General MacArthur's jurisdiction extends beyond the Japanese home island to include a few of the most northern Ryukyu islands (south of Kyushu) and the Izu islands (south of the Tokyo region of Honshu). All other Japanese islands are administered by naval military government.

That Japan will be forced to relinquish her mandate over the German islands that she acquired during World War I is taken for granted. These islands loomed large in the fighting in central Pacific--the Marshalls, with the capture of Kwajalein

in February 1944, the Marianas where the battles for Saipan and Tinian took place, and the Carolines with Peleliu, Ulithi, and the frequently bombed and raided strongholds of Truk, Ponape and Yap. No one suggests that Japan be permitted to retain them.

In addition to the Japanese mandates, it is considered likely that Japan will be forced to surrender some of her outlying islands, such as those "taken by violence and greed", in the words of the Cairo Declaration. Formosa, taken from China in 1895, falls in this category.

The only other Japanese islands that would possibly be assigned to the United States are the Izu, the Bonin and the Volcano islands. It is considered unlikely however that Izu islands--in every respect a part of the Japanese homeland--would be taken from Japan, and, whether they relinquish the Bonin and Volcano islands is of no administrative significance since they are at present, and probably will remain, completely devoid of population.

For administrative purposes, therefore, it can reasonably be assumed that the United States will have some responsibility in the future for all the former Japanese mandated islands and for the Ryukyus.

The War and Navy departments want outright annexations of the islands formerly mandated to Japan. These include such vital bases as Saipan and Tinian in the Marianas, Truk in the Carolines and Kwajalein in the Marshalls. By annexing these

PART V

MISCELLANY

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FINDINGS AND CONCLUSION

islands, any potential limitations on the United States right to construct bases would be forestalled. There would be little possibility that at some future date they might fall in the hands of some other power.

Military authorities would take the Ryukus and Bonin from Japan and place them under United States control through strategic trusteeship in the United Nations. In this manner the United States could retain complete control over Okinawa and other important islands near Japan.

State Department officials urge that the United States, on the other hand, take the lead in placing trust in the United Nations. It is their desire that the Atlantic Charter declarations against territorial annexations be strictly adhered to. Under this policy, the Ryukyus and Bonins would remain in Japanese possession. The Mariannas, Marshalls and Carolines would be held by the United States under United Nations trusteeship.

The final question regarding the creation of trust territories is: will the United States place its own island possessions in the Pacific under trusteeship agreement? Members of the United Nations are invited to place their dependent territories under the trusteeship system, but none has indicated an intention to do so. While it would be difficult to justify our keeping Guam out of the trusteeship system while placing Saipan under it, it is nonetheless unlikely that such trusteeship agreements will be decided upon in the near future.

FINDINGS AND CONCLUSION

A comparison of the Mandates and the International Trusteeship Systems brings to light some obvious similitudes as well as some striking contrasts. Covenant and Charter, Mandates and Trusteeship were both to a very large extent, products of American creative genius. The main analogies between the two institutions, between the photograph and blueprint, as it were, are five in number.

First, as the Mandates System, so the Trusteeship came into realization at the conclusion of a Great War in which almost the entire world was engaged. In considering the peace treaties after World War I and World War II, it was inevitable that some solution should be sought to the problem of "backward areas" and the plight of peoples unable to stand alone.

Secondly, as the Mandates System so too, the Trusteeship also was born of a compromise between disinterested humanitarianism and acquisitive nationalism.

The third analogy between the two institutions lies in the fact that both were devised as a means of improving and, to a

certain degree, as a substitute for the traditional colonial administration of the past.

Fourthly, does not "the principle that the interests of the inhabitants" of all non-self-governing territories "are paramount", the principle expressly formulated in article 73 of the Charter, dominate both the Mandates and the Trusteeship Systems? The inference which the Mandates Commission drew from the "sacred trust of civilization" idea mentioned in article 22 of the Covenant was that of the essentially disinterested character of the Mandates. It is to be hoped that the same conception will prevail in the administration of the trust territories.

Fifthly and finally, the problem of sovereignty of both mandated and trust areas has been posited in similar terms in both the Covenant and the Charter. Though the problem is solved in neither document, it seems to be implied in both that sovereignty is not to be vested in the administering authority.

In spite of these and other minor similarities which might be mentioned--such as the nature of the benefits which the administering authority is to secure for its wards and the kind of abuses against which it is to protect them--the two systems differ on at least five rather significant points.

First, the provisions of articles 73 to 91 of the Charter when compared to article 22 of the Covenant are much more elaborate and ambitious. The result obviously was in consequence of the desire to invest the United Nations with greater powers

in the Trusteeship System than those enjoyed by the League over its predecessor.

In the second place, that System is to be applied not only to former mandated territories, but also to such territories as "may be detached from enemy states as a result of the Second World War" and such as may be "voluntarily placed under the system by states responsible for their administration". Whether these vaster ambitions of the authors of the new system will be fulfilled or whether even some of the former mandated territories are to escape the supervision of the United Nations entirely, remains to be seen.

Thirdly, whereas under the Mandates System the administration of each area to which it applied was entrusted to a single Mandatory Power, with the negligible and even debatable exception of Nauru, it is provided, under article 81 of the Charter, that "the administering authority may be one or more states or the organization itself".

In the fourth place, the general militancy of the Charter as compared with the more pacific character of the Covenant is clearly reflected in the provisions concerning our subject. Whereas under the latter document the mandated territories were all to be demilitarized and the Mandatory Powers were debarred from deriving any direct or indirect military benefit from their administration, the former, as we have seen, on the contrary provides that all the trust territories play their part "in the maintenance of international peace and security" and

that some of the even become "strategic areas" and that some be placed under the supervision of the Security Council.

Fifthly and finally, the powers of the Trusteeship Council under the authority of the General Assembly are to be far more extensive than were those of the Permanent Mandates Commission, which was directly responsible to the Council of the League. Whereas the Commission, as we have seen, was composed solely of individual, independent experts appointed by an international authority for an indefinite period, the Trusteeship Council is to be a body of states represented by officials, each of whom will naturally be responsible to his own national government. To quote Professor William L. Rappard "whether the loss of international independence and impartiality which this change inevitably entails will be compensated, more than compensated or less than compensated by the enhanced political rights of inspection and even of direction conferred upon the Trusteeship Council is one point upon which the future alone can enlighten us".

In conclusion, it may be said of the International Trusteeship System of the United Nations that:

(a) It is a lofty, yet reasonable and practicable, concept for improving the lot of dependent territories and backward peoples.

(b) It has been developed to its present state only after great conflict, compromise and negotiations.

(c) Progress to date indicates that in the near future it

will comprise most but not all of the former mandates. The Japanese islands will probably be the last settled.

(d) There is not immediate prospect that it will include territories which now have colonial status.

(e) Of former enemy territory, it is probable that Italian African colonies and certain Japanese Pacific islands will eventually be included in the system.

(f) Particularly as regard (e) the Trusteeship System is deeply involved in the "settlement" of the "peace" conferences.

(g) The System is no stronger than the United Nations--in other words, its success depends on the cooperation of the three Great Powers.

(h) Its virtues can be over-estimated, but its proponents are confident of its ultimate success, and they point out that 200 years ago 33 of the present 51 of the United Nations were dependent territories.

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AN ABSTRACT

of

MANDATE - TRUSTEESHIP SYSTEMS

ABSTRACT OF MANDATES-TRUSTEESHIP SYSTEMS

The international supervision of the national administration of certain backward areas, as that system may be defined, was established under the peace settlement of 1919. Although somewhat comparable schemes of international cooperation may be found in previous history the true origin of the institution of mandates is to be found in the political compromise from which it sprang. It was born of the conflict between President Wilson and those who, after him and like him, opposed all annexations.

The Mandates system was to apply to the former African and Asiatic colonies of Germany and to the Arab provinces wrested from the Turks as a result of the Allied victories of the preceding years. These territories were first ceded by their defeated masters to their principle victors; each of them was then retroceded, for the purpose of administration, to the state whose armed forces had taken a decisive part in their conquest.

Since Article 22 of the Covenant of the League of Nations

provided that "the character of the mandate must differ according to the stage of development of the people, the geographical situation of the territory, its economic conditions and other similar circumstances", the areas to be mandated were accordingly divided into three groups.

In the first group the "A" Mandates (Syria and Lebanon, Palestine and Trans-Jordan and Iraq) formerly belonging to the Turkish Empire were provisionally recognized as independent, but were to receive the advice and assistance of a mandatory in its administration until such time as they were able to stand alone.

In the second group the "B" Mandates (The Cameroons, Togoland, Tanganyika, Ruanda-Urundi) as it is impossible to grant autonomy, the Mandatory is "responsible for the administration" under certain specified conditions. These conditions, which are briefly indicated in the Covenant, are designed to prevent certain "abuses" and to insure that the administration has the welfare of the natives constantly in mind. They aim also at securing respect for the rights and interests of other Members of the League of Nations.

Finally, the territories in the third group--the "C" Mandates (Southwest Africa and the Islands of the Pacific)--are "administered under the laws of the Mandatory as integral portions of its territory" and subject to the same safeguards in the interest of the indigenous population as the territories under "B" Mandates.

The Mandatories were Great Britain for Palestine, Iraq, British Cameroons, British Togoland and Tanganyika; France for Syria and Lebanon, French Cameroons and French Togoland; Belgium for Ruanda-Urundi; the Union of South Africa for Southwest Africa; Australia for New Guinea and the phosphate island of Nauru; New Zealand for Western Samoa; and Japan for the Pacific islands north of the Equator.

While enjoying full powers of legislation and administration, the Mandatories were not, however, to become the sovereign masters of these territories. Their rights over the so-called mandated areas were defined and limited by mandatory charters or agreements entered into between themselves and the Council of the League of Nations; for it was as trustees in behalf of the League and in conformity with principles set forth in Article 22 of its Covenant that the Mandatory Powers were to pursue their "sacred mission of civilization" of guiding their minor wards in the road toward self-government.

To assure their application, however, the drafters of Article 22 of the Covenant laid down certain principles of administration. Mandatory Powers were to render an annual account of their stewardship to the Council of the League; their reports were to be considered by the Permanent Mandates Commission, the sole link between the administering Mandatory Powers and the supervisory Council of the League.

The Council set up the Permanent Mandates Commission as a body of independent experts. The success of this Commission was

essentially owning to two circumstances: its composition and its procedure. The majority of its members were to be nationals of non-mandatory states, appointed for an indefinite period and were to enjoy a quasi judicial status. The Commission met twice annually to consider in turn all the reports of the Mandatory Powers in the presence and with the active cooperation of representatives of the governments responsible for their drafting.

In accordance with the wishes of the Commission the reports from mandated areas by the administrating authorities thereof became ever fuller and more detailed. Special studies published for and by the Mandatory governments carefully sifted by the Mandates Section of the Secretariat of the League were made available as the result of technical and scientific inquiries, newspaper clippings and periodicals, accounts of debates in the local consultative bodies or in the parliaments of the administering states, petitions from or about the territories, etc. As a consequence no event of any importance taking place in any of the mandated territories escaped the attention of the supervisory organ, the exception being the Pacific islands under Japanese mandate, for here everything--distance, language, official discretion and undoubtedly also deliberate policy--conspired to maintain a veil of ignorance and misunderstanding between the Commission and the mandatory administration.

Having carefully considered each report in the light of all other available data, the Commission proceeded to draft its findings addressed to the Council of the League. In its capaci-

ty as a purely advisory body to an overcautious and ever weaker Council, the Permanent Mandates Commission had no power of coercion whatever. However, its power of persuasion was indisputably very effective. No mandatory government, always excepting the Japanese, could afford to disregard its advice for fear of no other sanctions but those of public and parliamentary opinion.

APPENDIX

APPENDIX I

Territories under mandate in accordance with Article 22 of the Covenant of the League of Nations originally included the following:

CLASS A MANDATES

Mandate	Location	Mandatory Power	Area (sq. mi.)	Population
Palestine	Near East	United Kingdom	10,429	1,676,571
Trans-Jordan	" "	" "	16,220	325,000
Iraq (Mesopotamia)	" "	" "	143,240	3,560,456
Syria	" "	France	49,827	2,960,898
The Lebanon	" "	"		

CLASS B MANDATES

Tanganyika	E. Cent. Africa	United Kingdom	360,000	5,417,594
Br. Togoland	W. " "	" "	13,041	391,473
Br. Cameroons	W. " "	" "	34,081	868,637
Fr. Togoland	W. " "	France	21,893	780,497
Fr. Cameroons	W. " "	"	166,489	2,518,729
Ruanda-Urundi	Central "	Belgium	20,535	3,776,739

CLASS C MANDATES

So. West Africa	S. West Africa	Union So. Africa	317,725	344,871
Marshall	W. Cent. Pacific	Japan		
Caroline and		(occupied by	829	109,547
Marianas Islands		United States)		
New Guinea (N.E.)				
New Ireland,	S. West Pacific	Australia	93,000	673,270
New Britain, and				
Solomon Islands				
Western Samoa	S. West Pacific	New Zealand	1,133	62,391
Nauru	S. " "	Br. Emp. (Australia)	8	3,460

Of the above, Iraq, Syria and Lebanon are now members of the United Nations.

In the world today there are some 750,000,000 people who are in a colonial or not fully self-governing status, as against some 15,000,000 of people who may eventually become, more directly, wards of the United Nations under the Trustee-system. With respect to these dependent peoples the Charter provides as a sacred trust the obligation to promote the well-being of the inhabitants of these territories. This important chapter of the Charter may serve to accelerate progress and bring to fruition the efforts of decades to find a solution which would spell self-government for hundreds of millions of dependent peoples.

APPENDIX II

Article XXII of the Covenant of the League of Nations

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations which, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and which are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situa-

tion of the territory, its economic conditions and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognized subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principle consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience or religion, subject only to the maintenance of public order and morals, the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defense of territory, and will also secure equal opportunities for the trade and commerce of other members of the League.

There are territories, such as South-West Africa, certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the Mandatory or other circumstances, can be best administered under the laws of the Mandatory as integral

portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

APPENDIX III

British Mandate for the Cameroons

Article I

(Description of the Boundary)

Article II

The Mandatory shall be responsible for the peace, order and good government of the territory, and for the promotion to the utmost of the material and moral well-being and the social progress of its inhabitants.

Article III

The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organize any native military forces except for local police and for the defense of the territory.*

Article IV

The Mandatory:

(1) shall provide for the eventual emancipation of all slaves, and for as speedy an elimination of domestic and other slavery as social conditions will allow;

(2) shall suppress all forms of slave trade;

(3) shall prohibit all forms of forced or compulsory labour, except for essential public works and services, and then only in return for adequate remuneration;

(4) shall protect the natives from abuse and measures of fraud and force by the careful supervision of labour contracts and the recruiting of labour;

(5) shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

Article V

In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population.

No native land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights over native land in favour of non-natives may be created except with the same consent.

The Mandatory shall promulgate strict regulations against usury.

Article VI

The Mandatory shall secure to all nationals of states Members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect of every entry into and residence in the territory, the protection afforded to their persons and property, and acquisition of property, moveа-

ble and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on the condition of compliance with the local law.

Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nationality between the nationals of all States Members of the League of Nations, but on such conditions as will maintain intact the authority of the local Government.

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory with fiscal resources which seem best suited to the local requirements; or, in certain cases, to carry out the development of natural resources, either directly by the State or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources for the benefit of the Mandatory or his nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial and industrial equality hereinbefore guaranteed.

Further, the Mandatory shall ensure to all nationals of States Members of the League of Nations on the same footing as to his own nationals, freedom of transit and navigation, and complete economic, commercial and individual equality; except that the Mandatory shall be free to organize essential public

works and services on such terms and conditions as he thinks just.

The rights conferred by this article extend equally to companies and associations organized in accordance with the law of any of the Members of the League of Nations subject only to the requirements of public order, and on condition of compliance with the local law.

Article VII

The Mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; missionaries who are nationals of States Members of the League of Nations shall be free to enter the territory and travel and reside therein, to acquire and possess property, to erect religious buildings and to open schools throughout the territory; it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control.

Article VIII

The Mandatory shall apply to the territory any general international conventions applicable to his contiguous territory.

Article IX

The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall

be administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the above provisions.

The Mandatory shall therefore be at liberty to apply his laws to the territory under the mandate subject to the modifications required by local conditions and to constitute the territory into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measure adopted to that end do not infringe the provisions of this mandate.

Article X

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information concerning the measures taken to apply the provisions of this mandate.

Article XI

The consent of the Council of the League of Nations is required for any modification of the terms of this Mandate.

Article XII

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article XIV of the Covenant of the League of Nations.

*The French Mandates for Togoland and the Cameroons contain the following additional paragraph to Article III above:

"It is understood, however, that the troops thus raised may, in the event of general war, be utilized to repel an attack or for defense of the territory outside that subject to the Mandate."

APPENDIX IV

Articles of the United Nations Charter Applicable to Non-Self Governing Territories and International Trustee System

Chapter XI Declaration Regarding Non-Self Governing Territories.

Art. 73 Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and to this end:

(a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

(c) to further international peace and security;

(d) to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this article; and

(e) to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational considerations in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Art. 74 Members of the United Nations also agree that their policy in respect to the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the

rest of the world, in social, economic, and commercial matters.

Chapter XII

Art. 75 The United Nations shall establish under its authority and international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Art. 76 The basic objectives of the trusteeship system, in accordance with the purposes of the United Nations laid down in Article 1 of the present Charter, shall be:

(a) to further international peace and security;

(b) to promote the political, economic, social and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;

(c) to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world; and

(d) to ensure equal treatment in social, economic, and commercial matters for all Members of the United Na-

tions and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of art. 80.

Art. 77 1. The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

(a) territories now held under mandate;

(b) territories which may be detached from enemy states as a result of the Second World War; and

(c) territories voluntarily placed under the system by states responsible for their administration.

Art. 77 2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Art. 78 The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality.

Art. 79 The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Article 83 and 85.

Art. 80 1. Except as may be agreed upon in individual trustee-

ship agreements, made under Articles 77, 79 and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

Art. 80 2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Art. 81 The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

Art. 82 There may be designated, in any trusteeship agreement a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Art. 83 1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment,

shall be exercised by the Security Council.

Art. 83 2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

Art. 83 3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Art. 84 It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligation towards the Security Council undertaken in this regard by the administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

Art. 85 1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

Art. 85 2. The trusteeship Council, operating under the authority of the General Assembly, shall assist the General As-

sembly in carrying out these functions.

Chapter XIII

Art. 86 1. The Trusteeship Council shall consist of the following Members of the United Nations:

(a) those Members administering trust territories;

(b) such of those Members mentioned by name in Article 23 as are not administering trust territories; and

(c) as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations administering trust territories and those which do not.

Art. 86 2. Each Member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

Art. 87 The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

(a) consider reports submitted by the administering authority.

(b) accept petitions and examine them in consultation with the administering authority;

(c) provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and

(d) take these and other actions in conformity with the terms of the trusteeship agreements.

Art. 88 The Trusteeship Council shall formulate a questionnaire on the political, economic, social and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

Article 89 1. Each member of the Trusteeship Council shall have one vote.

Art. 89 2. Decisions of the Trusteeship Council shall be by a majority of the members present and voting.

Art. 90 1. The Trusteeship Council shall adopt its own rules of procedure including the method of selecting its President.

Art. 90 2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provisions for the convening of meetings on the request of a majority of its members.

Art. 91 The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

THE TRUSTEESHIP QUESTION: MANDATES AND FORMER ENEMY COLONIES NOW HELD BY ALLIES

MANDATES AND COLONIES

Ex-Japanese Mandates

Former German colonies which became Japanese mandates after World War I:

Name.	*Area (Sq. Miles).*	*Population.*	*Present Status.*
Marshall Is.....	160	10,000	These Pacific
Caroline Is	380	31,000	Islands are
Mariana Is.....	246	44,000	occupied by U. S.

Other Mandates

Areas which became mandates after World War I, and are still occupied by the mandatory power:

Name.	*Area (Sq. Miles).*	*Population.*	*Mandatory Power.*
Palestine	10,429	1,865,000	United Kingdom
Br. Cameroons....	34,081	868,600	United Kingdom
Br. Togoland.....	13,041	391,500	United Kingdom
Tanganyika	340,000	5,321,000	United Kingdom
Ruanda-Urundi ...	20,152	3,385,000	Belgium
Fr. Cameroons....	166,489	2,500,000	France
Fr. Togoland.....	21,893	739,000	France
S. West Africa....	317,725	318,000	Union S. Africa
N. E. New Guinea.	93,000	670,000	Australia
Nauru	8.4	2,672	U. K., Australia, N. Z.
Western Samoa...	1,130	56,000	New Zealand

Ex-Italian Colonies

Under the draft peace treaties, decision on disposal of these territories may be deferred for a year:

Name.	*Area (Sq. Miles).*	*Population.*	*Present Status.*
Libya	679,358	888,500	These African
Eritrea	15,754	600,500	colonies are
Italian Somaliland.	194,000	1,021,000	occupied by Britain

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THE PACIFIC ISLANDS—PROBLEM OF TRUSTEESHIP AND STRATEGY

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1. Hugo Grotius (Huig de Groot) De jure belli ac pacis-1619. In this work, Grotius laid the foundation upon which subsequent jurists were to build, combining custom and reason as sources of international law.

2. H.M.Stanley. The Congo and the Founding of the Free State London 1885.

3. In 1884 Germany called a conference at Berlin to regulate the claims of the various Powers. This conference was attended by most of the western European countries, Russia and the United States. The resulting Treaty was the first international convention laying down principles for the administration of dependent territories.

4. Walter Lippman, The Stakes of Diplomacy. (1915)

5. J.A.Hobson, Imperialism and Toward International Government (1915)

6. A.J.Grant. International Relations – Chap V.

7. David Hunter Miller. The Drafting of the Covenant. (1928)

8. Leonard Woolf. Mandates and Empire (1920)

9. The Treaty of Sevres with Turkey was repudiated by the Turkish Nationalists who succeeded in driving the Greeks out of Asia Minor and in playing off the imperial ambitions of Great Britain and France against one another. The final Treaty of Lausanne of 1923 was consequently much more favorable to the new Turkish State than would otherwise have been the case.

10. Draft Mandates for Togoland and the Cameroons. League of Nations Union by its General Secretary Maxwell Garnett dated July 28,1921 in protest against provision in Article 9 of the Draft Mandate for Togoland and Cameroons.

11. On April 14,1920, at San Remo, the British and French Governments acting in the interests of military security, reached an agreement for the division between them of rights to exploit oil resources in Rumania, Russia and Mesopotamia and elsewhere.

12. Treaty with King Feisal dated October 10,1922 between his Britannic Majesty and His Majesty the King of Iraq.

13. Ibid. Permanent Mandates Commission.

Notes

Chapter 2.

1. See Appendix III Mandate Charter for the Cameroons

2. See Appendix III for details.

3. See Appendix II for details of Article 22 of Covenant of League of Nations.

4. See Chapter 4– Aspects of Mandatory operation.

Chapter 3.

1. Report of Permanent Mandates Commission by its Chairman M. Theodoli to Council of the League of Nations on October 10 1921 Re: (1) Rules of Procedure
   (2) Study Reports of Administration of some of the territories
   (3) Drawing of Questionnaires.

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2. See League of Nations Publications–Reports of the Permanent Mandates Commission 1921–1928

3. League of Nations, Minutes of the Permanent Mandates Commission 1921 and Reports on the Work of the Sessions of the Permanent Mandates Commission 1921.

4. See note 3.

5. Address by Sir Hugh Clifford K.C.M.G.–President of Nigerian Council–December 29,1920 Re: The Cameroons Province
   Adjustment of Boundaries with French Colonial Authorities
   Neglected Condition of the Cameroons Province
   Restorative Measures that will be necessary.

6. Procedure Regarding Petitions from the Inhabitants of Mandated Areas–Reported by M. W.Quinones de Leon and Resolutions adopted by the Council on September 2,1922 at Geneva.

7. Leonard Woolf, Mandates and Empire. (1920)

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1. H.A.Foster. The Making of Modern Iraq. (1938)
2. C. Leubuscher. Tanganyika Territory. (1944)
3. Lord Hailey. An African Survey. (1938)

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